IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 20706 of 2004

Between:

1 K. Asif Mohiuddin, S/o. K. Moinuddin,
Indira Priyadarshini Government College For Women, Nampally,

Hyderabad.
2 Dr. A. Lalitha, W/o. P. Anjaneya Reddy,
B.J.R. Government College, Nampally, Hyderabad.
3 Dr. Mohd. Abdul Wahid, S/o. Mohd. Abdul Aziz,
Government Degree College for Women, Hussaini Alem,

Hyderabad.
4 Dr. C.A.L. Kameshwari, D/o. C.R. Sarma,
Government City College, Hyderabad.

..... PETITIONERS

AND

1 The Secretary of Government, Eduation Department, A.P.

Secretariat Buildings, Saifabad, Hyderabad.
2 The Commissioner of Collegiate Education, Nampally,

Government of Andhra Pradesh, Hyderabad.
3 Sri A. Krishna, S/o. and age not known,
Government Degree College, Nandyal, Kurnool District.
4 Sri B. Narayana Reddy, S/o. and age not known,
Government Degree College, Nandyal, Kurnool District.
5 Sri K. Nagabhushana Rao, S/o. and age not known,
Government College, Sattupalli, Khammam District.
6 Smt. P. Kalyani, S/o. and age not known,
Government Degree College, Vijayawada, Krishna District.
7 Sri L. Govinda Reddy, S/o. and age not known,
Government Degree College, Rajampet, Kadapa District.
8 Govt. College Gazetted Teachers ` Association, A.P. rep. by its

General Secretary, Dr. S. Laxminarayana S/o. Rajamallaiah, 18 48, Pragatinagar, Ramanthapur, Hyderabad

9 P. Babu Rao, S/o. Polaiah
Y.A. Govt. College for Women, Chirala, R/o. Chirala,

Prakasam District.
10 Dr. S. Laxminarayanana S/o. Rajamallaiah
H.No.18-48, Pragathi Nagar, Ramanthpur, Hyderabad

(RR 8to10 impleaded as per court order dt. 18-2-2005 in WPMP 28205 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of writ of certiorari calling for the records relating to theorder of the Hon'ble A.P.Administrative Tribunal dt. 29-10-2004 in O.A.No. 1264 of 2003 and batch and quash the same by holding it as illegal, bad, arbitrary and further declare

G.O.Ms.No. 73 dt. 14-10-2003 as illegal, bad, arbitrary and further declare G.O.Ms.No. 73 dt. 14-10-2003 as illegal, bad arbitrary and contrary to the judgement of the Hon'ble A.P. Administrative Tribunal dt. 9-2-2001 in O.A.No. 325 of 1999 and batch with a further direction to the respondents to prepare the seniority list by taking into account the judgment of the Hon'ble A.P. Administrative Tribunal dt. 9-2-2001 in O.A.No. 325 of 1999 and batch and to effect the promotions to the post of Principal basing on the said judgement.

Counsel for the Petitioner:MR.J.R.MANOHAR RAO

Counsel for the Respondent Nos. 1 & 2 : GP FOR SERVICES-I

Counsel for the Respondent Nos.8 to 10 : MR.M.PANDURANGA RAO

WRIT PETITION NO : 20900 of 2004

Between:

1 B. Ekanatha Reddy,
Government of Degree College, Nandikotkur, Kurnool District.
2 Mohammed Ghouse,
Principal, Silver Jubilee Government College, Kurnool.
3 G. Venkat Reddy,
Government College Teachers Association (GCTA), 2nd Floor,

21st Century Commercial Complex,
Building, Nampally, Hyderabad.

..... PETITIONERS

AND

1 Principal Secretary to Government, Higher Education (CE.I.I)
Department, Government of Andhra Pradesh, Secretariat,

Hyderabad.
2 Commissioner/Director of Collegiate Education, Andhra

Pradesh, Hyderabad.
3 Smt. P.B. Nalini Sukumari,
Indira Priyadarshini Government Degree College for Women,

Nampally, Hyderabad, R/o. Hyderabad.
4 T. Jaya Raju,
SR & BGNR Government College, Khammam,

Khamma District.
5 B. Subhaschandrabose,
SR & BGNR Government College, Khammam,

Khamma District.
6 Dr. S. Laxminarayana,
Government College Gazetted Teachers Association, Andhra

Pradesh, Hyderabad.
7 Surya Kirshna,
SR & CVR Government College of Vijayawada,

Krishna District.
8 P.P. Babu Rao,
Government Degree College, Chirala, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction, more particularly one in the nature of Writ of Certiorari: (a) Call for the records relating to and connected with the Judgment rendered on 29-10-2004 in O.A.No. 6785 of 2003 and batch of cases and quash or set aside the same holding it as unsustainable; (b) also call for the records relating to and connected with G.O.Ms.No.73, Education, dated 14-10-2003 issued by the 1st respondent publishing final seniority list of Lecturers to the extent of inclusion of the promotee Junior Lecturers, who have been so promoted with effect from 01-04-1976 and quash or set aside the same holding it as illegal; (c) declare the G.O.Ms.No.73, dated 14-10-2003 of the 1st respondent publishing final seniority list of Lecturers giving effect to the notional promotions to seniority also with effect from 01-04-1976 to the Junior Lecturers who were appointed as lecturers after successful screening and selection by the Departmental Promotion Committee much later to the Lecturers already having much more service as Lecturers

as illegal, arbitrary, unjust, unfair, unconstitutional and against the spirit of the Judgment rendered by APAT on 09-02-2001 in O.A.No. 1507 of 1999, O.A.No. 1449 of 1994, O.A.No. 325 of 1999 etc., and batch which became final.

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondents : GP FOR SERVICES I

Sri M.Surender Rao, Sri M.Panduranga Rao & Sri Srikanth

The Court made the following :

COMMON ORDER:

The writ petitioners, unsuccessful applicants in the O.As. thought of the present legal battle aggrieved of the reckoning of the seniority with retrospectivity by virtue of which it is said that the writ petitioners are seriously prejudiced or affected. The unsuccessful applicants 2 to 4 in O.A.No.1264/2003 on the file of A.P. Administrative Tribunal, in short referred to as "Tribunal" hereinafter, filed W.P.No.20706/2004 praying for a writ, order or direction more in the nature of writ of certiorari calling for the records relating to the order of the Tribunal dated 29-10-2004 in O.A.No.1264/2003 & Batch and quash the same by holding it as illegal, bad, arbitrary and further declare G.O.Ms.No.73, dated 14-10-2003 as illegal, arbitrary and contrary to the Judgment of the Tribunal dated 9-2-2001 in O.A.No.325/99 & Batch with a further direction to the respondents to prepare the seniority list by taking into account the Judgment of the Tribunal dated 9-2-2001 in O.A.No.325/1999 & Batch and to effect the promotions to the post of Principal basing on the said Judgment and to pass such other suitable orders.

2. Likewise, the unsuccessful applicants in O.A.No.6785/2003 on the file of Tribunal filed W.P.No.20900/2004 praying for a writ, order or direction more particularly one in the nature of a writ of certiorari : (a) call for the records relating to and connected with the Judgment rendered on 29-10-2004 in O.A.No.6785/2003 and Batch of cases and quash or set aside the same holding it as unsustainable; (b) also call for the records relating to and connected with G.O.Ms.No.73, Education, dated 14-10-2003 issued by the 1st respondent publishing final seniority list of Lecturers who had been so promoted with effect from 1-4-1976 and quash or set aside the same holding it as illegal, and (c) declare G.O.Ms.No.73, dated 14-10-2003 of the 1st respondent publishing final seniority list of Lecturers giving effect to the notional promotions to seniority also with effect from 1-4-1976 to the Junior Lecturers who were appointed as Lecturers after successful screening and selection by the Departmental Promotion Committee much later to the Lecturers already having much more service as Lecturers as illegal, arbitrary, unjust, unfair, unconstitutional and against the spirit of the Judgment rendered by the Tribunal on 9-2-2001 in O.A.No.1507/1999, O.A.No.1449/1994, O.A.No.325/1999 etc., and Batch which became final, and to pass such other suitable orders.

3. The Tribunal made the Common Order dated 29-10-2004 in O.A.No.6785, 6996, 1264, 8578 of 2003. Since the factual matrix is common and the questions involved for adjudication also being common, the matters are being disposed of by this Common Order.

4. Sri J.R.Manohar Rao, the learned Counsel representing the writ petitioners in W.P.No.20706/2004 had traced the historical background of this litigation and also had pointed out to the contents of G.O.Ms.No.1072,

G.O.Ms.No.423, G.O.Ms.No.37, G.O.Ms.No.28 and also the other relevant G.Os. and the correspondence and the Government Memos in relation thereto and had pointed out that even taking into consideration the prior scales of Assistant Lecturers and the Junior Lecturers as can be reflected from G.O.Ms.No.1072, it is totally unjust in reckoning the seniority of the Junior Lecturers with retrospective date by issuing G.O.Ms.No.73, dated 14-10-2003 which cannot be sustained. The Counsel also pointed out that there was no provision in the service rules for promotion of Junior Lecturers as Lecturers in Government Degree Colleges and for the first time by virtue of the amendment which had been brought in to A.P. Educational Service Rules in G.O.Ms.No.259, dated 9-2-1962 by G.O.Ms.No.423 dated 14-9-1979, a channel had been provided for making such appointments by transfer as Lecturers from the cadre of Junior Lecturers. The Counsel also pointed out that on the strength of seniority, the Departmental Promotion Committee, in short referred to as "D.P.C.", recommended candidates for promotion to the category of Lecturers in January 1989. The learned Counsel also had pointed out to R.P.No.1705/87 wherein U.G.C. scales had been claimed on the ground that they had worked as Junior Lecturers in Degree Colleges for more than three years and the said claim was rejected by the Judgment dated 2-7-1993. The learned Counsel also pointed out to G.O.Ms.No.28 dated 22-1-1999 granting retrospective promotion to 228 Junior Lecturers as Lecturers which was challenged in O.A.No.325/99 & Batch by Assistant Lecturers who were redesignated as Lecturers prior to 1980. The Counsel also pointed out that the Tribunal pointed out that the benefits extended to the category of Junior Lecturers by the Government by G.O.Ms.No.37, Education dated 5-2-1994 and G.O.Ms.No.28 dated 22-1-1999 will not in any way adversely affect the rights of the present writ petitioners and the other similarly placed persons. The Counsel also pointed out that G.O.Ms.No.73, dated 14-10-2003 impugned in the O.As. is definitely contrary to the Judgment of the Tribunal made in O.A.No.325/99 & Batch dated 9-2-2001 since the Junior Lecturers who were promoted after 1981 had been given retrospective seniority from 1-4-1976 and Rule 33 of the A.P. State and Subordinate Service Rules, 1996 which came into force on 15-10-1996 cannot be made applicable to such a case and the said Rule has no retrospective effect. The learned Counsel also had pointed out to certain other proceedings and the correspondence and would contend that such fixing of the seniority with retrospective effect which would seriously affect the writ petitioners and such other similarly placed persons definitely cannot be sustained. The learned Counsel meticulously pointed out several other factual details to substantiate his submissions. The learned Counsel also in elaboration had explained the reasons why the prior order was not challenged in the light of the clear findings recorded therein. The learned Counsel also placed reliance on **S.K. SAHA Vs. PREM PRAKASH AGARWAL** , **STATE OF BIHAR Vs. SRI AKHOURI SACHINDRA NATH** , **UDAY PRATAP SINGH Vs. STATE OF BIHAR** and **VINODANAND YADAV Vs. STATE OF BIHAR** .

5. Sri Nuty Ram Mohan Rao, the learned Counsel representing the writ petitioners in W.P.No.20900/2004 substantially proceeded adopting the same grounds which had been urged by Sri J.R.Manohar Rao referred to supra. The learned Counsel while further elaborating his submissions had pointed out that the Tribunal had ignored to give effect to the Judgment rendered on prior occasion made in O.A.No.325/99 & Batch. The Counsel also pointed out that the State Government brought a change in structure of cadres among various teaching

staff at Degree College level by introducing a Scheme in G.O.Ms.No.1072, Education Department, dated 26-11-1976 and by this rationalization method a host of categories of posts such as Readers, Heads of Departments, Senior Lecturers, Lecturers (Senior Scale), Lecturers (Junior Scales), Assistant Lecturers were merged into a common category called Lecturer and hence a single cadre of Lecturers had been brought into effect from 1-4-1976 and such of those Assistant Lecturers, Tutors and Demonstrators working in the Degree Colleges were also brought in to the cadre of Lecturers upon their accomplishing certain other requirements, both academic and length of service. The Counsel also pointed out that those Junior Lecturers working in Junior Colleges do not get merged into common cadre of Lecturers in terms of G.O.Ms.No.1072 and the State Government had created a channel for promotion to the Junior Lecturers to the post of Lecturer through G.O.Ms.No.423, Education dated 19-4-1979. It is pointed out that till such time an avenue is created, the Junior Lecturers working in Junior Colleges cannot be upgraded as Lecturers with effect from 1-4-1976. The Counsel also further pointed out that the Government passed orders in G.O.Ms.No.1174, dated 5-10-1981 and 228 posts of Junior Lecturers existing in Degree Colleges were not upgraded as Lecturers and when once the posts of Junior Lecturers were upgraded, the existing incumbent Junior Lecturers can seek consideration for promotion against such posts which can happen only on or after 5-10-1981, but definitely not earlier thereto. The Counsel would explain that that is the reason why the claims and cases of Junior Lecturers had been placed before a properly constituted Committee which had assessed their suitability for promotion as Lecturers and based on the recommendations made by such properly constituted Committee they were promoted during the year 1981-82. The learned Counsel also pointed out that a Junior Lecturer is required to put in 5 years of service to earn promotion as a Lecturer and when the D.P.C. met in the year 1981, it considered the eligible Junior Lecturers and thereafter there was never any assessment made by anybody much less by the D.P.C. or the State Government as to the Junior Lecturers otherwise eligible and qualified to be promoted as Lecturers from 1-4-1976. The Counsel further pointed out that G.O.Ms.No.423, Education dated 19-4-1979 had been further amended through G.O.Ms.No.37, Education, dated 5-2-1994, but however the legal position in this regard stands unaltered. The learned Counsel also pointed out that granting notional date of promotion for conferring certain benefits such as career advancement scheme benefits, pay fixation etc., cannot result in conferring the right to claim seniority. Certain submissions were made relating to R.P.No.1705/87 & Batch and the learned Counsel also had pointed out to certain relevant portions of the order made by the Tribunal in the said Batch. The Counsel while concluding had taken this Court through the relevant portions of the order made in O.A.No.325/95 & Batch and ultimately would conclude that the order which had been impugned in the O.As. definitely cannot be sustained and the Tribunal gravely erred in negativing the relief prayed for by the applicants in the said O.As.

6. Sri M.Surender Rao, the learned Counsel representing certain of the unofficial respondents, successful Junior Lecturers, made the following submissions. The learned Counsel initially attacked the very legal right of these Assistant Lecturers to question the aspect of seniority on the ground that at no point of time they were validly appointed to the said posts and there are no proper pleadings and no particulars in this regard had been furnished. The Counsel also had referred to the pleadings of the parties in the prior proceedings, stand taken by the Government in this regard and also the directions issued in O.A.No.325/99 & Batch and had pointed out that

the said order had attained finality and the same was left unquestioned by the writ petitioners. The learned Counsel while making elaborate submissions had traced the historical background of the Junior Lecturers and the Assistant Lecturers from the commencement and had pointed out that by virtue of G.O.Ms.No.423 dated 19-4-1979 A.P. Educational Service Rules issued under G.O.Ms.No.259 dated 9-2-1962 were amended providing for appointment to the post of Lecturer by appointment by transfer of a Junior Lecturer and the said amendment was given retrospective effect by G.O.Ms.No.37 dated 5-2-1994. The Counsel pointed out relating to the giving of benefit of D.A. merged scales by virtue of G.O.Ms.No.1376 dated 1-12-1975. It was further contended that on the strength of the report of the 3 Man Committee, G.O.Ms.No.1072 dated 26-11-1996 was issued whereunder different categories of Tutors existing in Degree Colleges were merged into one i.e., the category of Lecturer. The Counsel also pointed out to the letter dated 10-11-1978 whereunder the Director of Higher Education sought some clarification. The Counsel with all vehemence pointed out to Memorandum No.838/W2/79-1, dated 24-4-1979 whereunder the Government authorized and directed to redesignate the Assistant Lecturers at Item (5) of the said Memorandum subject to ratification by the Government. At no point of time there was redesignation of these Assistant Lecturers as Lecturers and much less there was any ratification on the part of the Government and there are no pleadings relating to the so called valid appointments and hence the learned Counsel would contend that in the absence of the same, such parties who are unable to establish that they had been validly appointed cannot claim any right to seniority. The learned Counsel placed strong reliance on **G.DHARMA VEERA REDDY Vs. GOVERNMENT OF ANDHRA PRADESH .** The learned Counsel meticulously had taken this Court through all the relevant G.Os. and the correspondence and also the findings recorded in O.A.No.325/99 & Batch and also had pointed out that written arguments in detail had been filed even before the Tribunal and certain of the aspects which had been highlighted were left untouched by the Tribunal. The Counsel also would point out that the principle which had been laid down in the prior order in O.A.No.325/99 & Batch may have to be taken into consideration. The learned Counsel had pointed out to the A.P. Educational Subordinate Service Rules and A.P.Education Service Rules and also adhoc rules for Junior Lecturers and had pointed out to G.O.Ms.No.423 and G.O.Ms.No.37 and would contend that the legal fiction would be operative. The redesignation is only an executive fiat. The learned Counsel mainly concentrated on the weakness of the enforceability of any legal right on the part of the writ petitioners by pointing out to several G.Os. and also the correspondence and the Government Memos in this regard. The learned Counsel would submit that ultimately the point would boil down to mere fixation or reckoning the seniority of the Junior Lecturers, Assistant Lecturers etc., who became Lecturers. In the light of the merger, the difference of scale if any in between Junior Lecturers and Assistant Lecturers would fall into insignificance. Hence the Counsel would submit that in the facts and circumstances the Tribunal is well justified in negativing the relief to the writ petitioners/applicants. The learned Counsel placed strong reliance on **PRAFULLA KUMAR DAS Vs. STATE OF ORISSA** to substantiate his stand in this regard.

7. Sri M.Panduranga Rao and Sri Srikanth, Counsel representing certain unofficial respondents who were successful before the Tribunal, in substance adopted the submissions made by Sri Surender Rao and further would maintain that all the persons who would be affected by any adverse order being passed had not been

impleaded either in the O.As. or in the present Writ Petitions and on this ground alone, the Writ Petitions are liable to be dismissed. The learned Counsel also further pointed out that the first writ petitioner in W.P.No.20706/2004 is not qualified to hold the post of Principal since he does not possess Ph.D. qualification and hence the first writ petitioner has no locus-standi to question the impugned action. The learned Counsel also had traced the historical background of the litigation and had pointed out to the directions issued in the prior Writ Petitions and also in the O.As. and had pointed out to the G.Os. which had been already referred to supra and would comment that when once a person is entitled to career advancement scheme it would be ridiculous to contend that this will not enure to his benefit to claim seniority. The Counsel also would point out that the Government is the Competent Authority to correct the mistake if any committed, and after taking into consideration the relevant aspects and also the various representations made, referring to the prior G.Os. or Rules and also the orders and directions, final seniority list had been issued which is in accordance with law and the same need not be disturbed. The learned Counsel also pointed out to the findings recorded by the Tribunal in this regard and would contend that this Court exercising powers of judicial review need not disturb such well considered findings recorded by the Tribunal and hence the Writ Petitions deserve a summary dismissal at the hands of this Court.

8. The learned Government Pleader for Services-I had taken this Court through the counter affidavit wherein several details had been narrated tracing the historical background of the litigation and would contend that the seniority list prepared by the Government is in accordance with law and is in conformity with the prior orders made and the directions issued by the Courts and the Tribunals. The learned Government Pleader also had pointed out to G.O.Ms.No.28 and made certain submissions relating to the awarding of benefit of career advancement scheme and the impact thereof on the present reckoning of the seniority too. The learned Counsel also further pointed out that though this is a general question, it may be noted that all such persons who may be ultimately affected are not brought before the Court and on this ground also the Writ Petitions are bound to fail.

9. In both the Writ Petitions, the common order made in O.A.No.1264/2003 & Batch dated 29-10-2004 wherein G.O.Ms.No.73 dated 14-10-2003 had been questioned being contrary to the Judgment made by the Tribunal in O.A.No.325/99 & Batch and on certain other grounds, had been questioned.

10. The writ petitioners in W.P.No.20706/2004 were initially appointed as on 1-3-1971, 5-5-1972, 10-3-1972 and 14-4-1971 as Junior Lecturers and Demonstrators and petitioners 1 to 3 were appointed as Assistant Lecturers on 11-5-1975, 30-1-1974 and 2-4-1975 and these were designated as Lecturers with effect from 11-5-1978, 30-1-1977, 2-4-1978 and 14-4-1976 respectively in terms of G.O.Ms.No.1072, dated 26-11-1976. It was further stated that as per A.P. Educational Service Rules the post of a Lecturer is to be filled by direct recruitment and recruitment by transfer from among the Assistant Lecturers in the A.P. Education Subordinate Service. The post of Junior Lecturer was governed by separate service rules and they were in the lower scales and they were not eligible for promotion to the post of Lecturers. It was further averred that accepting the recommendations of the 3 Man Committee, the Government issued G.O.Ms.No.10782 dated 26-11-1976 merging all the categories of

Teachers into one viz., “Lecturers in the revised pay scales of Rs.700-1600. The pay scales are applicable subject to certain conditions laid in the G.O. and the post of Junior Lecturers existing in Degree Colleges will be converted into Lecturers in the revised pay scales 1976. However the Junior Lecturers are not applicable for redesignation as Lecturers automatically. According to the said G.O. basing upon over all inter-se seniority of Junior Lecturers in a particular subject, the senior most Junior Lecturers will be promoted as Lecturers and after being approved by the D.P.C. the Assistant Lecturers will be converted as Lecturers if they complete three years of service. Likewise, the Demonstrators/Tutors will be converted as Lecturers on completion of five years of service. It was further averred that some of the Junior Lecturers filed R.P.No.1705/87 and Batch claiming U.G.C. pay scales on the ground that they had worked as Junior Lecturers in Degree colleges for more than three years and the Tribunal by the Judgment dated 2-7-1993 rejected their claim by holding that the Junior Lecturers are not entitled to be converted as Lecturers automatically.

11. It was further averred in para-4 of the affidavit that the A.P. Education Service Rules were amended by G.O.Ms.No.423 dated 18-4-1979 and according to the said amendment appointment to the posts of Lecturers will be by recruitment by transfer from among the Junior Lecturers. Thus, for the first time, Junior Lecturers became eligible for promotion to the post of Lecturers and consequent thereupon by G.O.Ms.No.37, dated 3-2-1994 the said amendment was given retrospective effect from 1-4-1976 and in view of the aforesaid amendment of the rules, the D.P.C. was constituted for promotion of Junior Lecturers as Lecturers during December 1980 and basing upon the recommendations of the D.P.C. the Junior Lecturers were promoted as Lecturers from January 1981 onwards. It was further stated that in view of the latest amendment to the rules in G.O.Ms.No.37, dated 3-2-1994 it appears some of the Junior Lecturers were promoted with effect from 1-4-1976. However the Commissioner of Collegiate Education, A.P., Hyderabad issued proceedings Rc.No.12/D.II/97 dated 27-1-1997 clarifying that those Lecturers on their retrospective promotion notionally with effect from 1-4-1976 are not entitled to claim seniority over the then Assistant Lecturers/Tutors/Demonstrators who were working in Degree Colleges as on 31-3-1976 and later redesignated as Lecturers. In view of the said clarification the Junior Lecturers who were promoted with retrospective effect are not entitled to claim seniority over the writ petitioners. Even in the proceedings in which the Junior Lecturers were promoted retrospectively it was made clear that the said promotion will be subject the further orders in O.A.No.1449/94. It was averred in para-5 of the affidavit that by G.O.Ms.No.1432 dated 25-9-1997 three persons were given benefit of notional promotion for the purpose of computing service for Career Advancement Scheme and basing on that the Government issued G.O.Ms.No.28 dated 22-1-1999 promoting 228 Junior Lecturers as Lecturers with retrospective effect from 1-4-1976. Thereafter, 362 Junior Lecturers were given retrospective promotion as Lecturers from 1-4-1977 and 112 were promoted as Lecturers with retrospective from 1-4-1978. According to the said G.O. the retrospective promotion was ordered for the purpose of Career Advancement Scheme. However the said G.O.Ms.No.28 dated 22-1-1999 was challenged before the Tribunal in O.A.No.325/99 and Batch by the Assistant Lecturers who were redesignated as Lecturers before 1981. In the said O.A. it was alleged that by giving retrospective promotion to the Lecturers the seniority of the applicants therein will be adversely affected. Initially the Tribunal granted stay, but however on an application filed to vacate the interim orders the Tribunal made it clear that the benefit

conferred under G.O.Ms.No.28 dated 22-1-1999 does not in any manner alter the seniority of the beneficiaries vis-à-vis others. The Batch of O.As. came up for hearing in the month of December 2000 and the Tribunal by the Judgment dated 9-2-2001 held that G.O.Ms.No.28 dated 22-1-1999 does not adversely affect the rights of any of the individuals. The Tribunal held that G.O.Rt.No.1432 was issued only for the purpose of Career Advancement Scheme and it does not in any way confer any right of seniority in the cadre of Lecturers. Even with regard to G.O.Ms.No.28, dated 22-1-1999 the Tribunal held that the said G.O. will not affect the rights of the writ petitioners in any manner. It was also stated that the Tribunal also referred to the memo of the Commissioner in Rc.No.12/D.II/97 dated 27-1-1997. According to the Tribunal the said proceeding makes it abundantly clear that the benefits extended to the category of Junior Lecturers by the Government by way of issuance of G.O.Ms.No.37 dated 5-2-1994 and G.O.Ms.No.28 dated 22-1-1999 do not adversely affect the rights of any of the individuals. It is submitted that the amendment to rules made by G.O.Ms.No.37 dated 5-2-1994 was challenged in O.A.No.1449 of 1994 and O.A.No.7824 of 1997 and the said O.As. were also heard along with O.A.No.325/99 & Batch. It was averred in para-6 of the affidavit that as per the Judgment of the Tribunal the notional promotion conferred either under G.O.Ms.No.37 dated 5-2-1994, G.O.Rt.No.1432 dated 25-9-1997 or G.O.Ms.No.28 dated 22-1-1999 will not be counted for the purpose of seniority and it is not going to affect the rights of the Assistant Lecturers, Demonstrators/Tutors who are redesignated as Lecturers. The respondents therein did not challenge the Judgment of the Tribunal before the Hon'ble High Court. The respondents i.e., the Junior Lecturers who were notionally promoted as Lecturers, have not filed any Writ Petition challenging the Judgment of the Tribunal dated 9-2-2001 and the same had attained finality. It was further averred that the Government issued Memo No.32670/EH/98-12 dated 21-6-2001 making it clear that the Lecturers who are designated as Lecturers by way of merger of various categories of the then existing different categories of posts in Government Degree Colleges consequent to the orders issued in G.O.Ms.No.1072, Education Department, dated 26-11-1976 shall be treated as seniors to the persons who are appointed as Lecturers by way of promotion from the category of Junior Lecturers in the Government Junior Colleges subsequently given promotion retrospectively with effect from 1-4-1976 which is notional in nature by G.O.Ms.No.28, Education Department, dated 22-1-1999 by virtue of amendments issued in G.O.Ms.No.423, dated 19-4-1979 and G.O.Ms.No.37 dated 5-2-1995 to the special rules issued in G.O.Ms.No.259 dated 9-2-1962. It was further averred that to the knowledge of the petitioners the said Government memo was not challenged regarding fixation of seniority and ignoring the memo of the Commissioner of Collegiate Education, dated 27-1-1997 the Judgment of the Tribunal dated 9-2-2001 in O.A.No.325/99 & Batch and the Government Memo No.32670/EE.1/98-12 dated 21-6-2001, the Director of Collegiate Education issued proceedings dated 20-2-2003 communicating the integrated provisional seniority list of Lecturers working in Government Degree Colleges with the common date of notional promotion/redesignation with effect from 1-4-1976. In the said seniority list several Junior Lecturers who were promoted notionally with effect from 1-4-1976 were included even though they were actually promoted in the year 1981 and thereafter. Aggrieved thereby O.A.No.1264/2003 was filed challenging the said provisional seniority list and also for a direction to the respondents to prepare the seniority list by taking into account the Judgment of the Tribunal and circular memo dated 27-1-1997. The

Tribunal while admitting the O.A. on 7-3-2003 directed the applicants therein to file a representation to the 1st respondent within one week from the date of receipt of the order and the 1st respondent was directed to consider the said representation with reference to their objections in respect of proceedings dated 16-9-2002 of the Government and proceedings dated 20-2-2003 of the Director of Collegiate Education within four weeks thereafter. The Tribunal further held that the pendency of the O.A. does not preclude the Government to proceed with finalisation of the seniority list. However, aggrieved with the direction regarding finalisation of the seniority list, the applicants therein filed W.P.No.5172/2003 challenging the orders of the Tribunal dated 7-3-2003 and the said Writ Petition was disposed of the by this Court on 7-4-2003 with the following direction :

> "We do not refer to the detailed facts leading to filing of this Writ Petition. With the agreement of the learned Counsel for the parties, we direct that the representations of the applicants before the Hon'ble Tribunal, which have already been made, shall be considered by the official respondents and an order shall be passed on those representations. Before passing an order on those representations, the official respondents shall not finalise the seniority list. The order of the Tribunal is accordingly modified. This order shall remain operative till the disposal of the O.A. The Writ Petition is accordingly disposed of".

It was further averred that the Government issued Memo No.SP/1924/CE.1.1/2003-5, dated 13-6-2003 directing the Director of Collegiate Education to take necessary action to dispose of the objections filed by the writ petitioners as ordered by the Tribunal and this Court and to communicate the final seniority list. The said Memo dated 13-6-2003 was challenged in O.A.No.3820 of 2003. In the Memo dated 13-6-2003 the Government directed the Director of Collegiate Education to finalise the seniority list in partial modification of the orders issued in Government Memo dated 21-6-2001. The Tribunal while admitting the O.A. on 25-6-2003 suspended the memo dated 13-6-2003 but however made it clear that the same shall not preclude the Government from following the interim directions of the Tribunal in O.A.No.1264/2003 as modified by this Court in W.P.No.5172/2003 dated 7-4-2003.

12. It was further averred in para-9 of the affidavit that the Government issued final seniority list in G.O.Ms.No.73 dated 14-10-2003 and no reasons were assigned in the final seniority list with regard to the several objections raised by the individuals. It was stated that the final seniority list is nothing but a provisional seniority list. The impugned seniority list is illegal, bad, arbitrary and contrary to the Judgment of the Tribunal in O.A.No.325/99 & Batch. It was also further averred that the Judgment is binding on the respondent as they were parties to the earlier proceedings in O.A.No.325/99 and Batch. The action of the respondents is nothing but contempt of the Tribunal. Basing on the Judgment of the Tribunal in O.A.No.325/99 and Batch dated 9-2-2001 and basing on the Government memo dated 21-6-2001, the respondents promoted 150 Lecturers/Readers as Principals in the month of June 2001 and thereafter 25 Lecturers/Readers were promoted as Principals in the month of October/November 2001. The respondents had not stated anything in the final seniority list as to the reasons for changing the procedure between June 2001 and October 2003. It was further averred that in fact while promotions were effected in the year 2001 there was no seniority list and basing on the Judgment of the Tribunal dated 9-2-2001 in O.A.No.325/99 and Batch and the Memo of the Commissioner dated 27-1-1997, the Government Memo dated 21-6-2001, promotions were made in the year 2001. Aggrieved by the provisional

seniority list dated 20-1-2003 the petitioners filed O.A.No.1264/2004 and during the pendency of the O.A. the Government issued final seniority list in G.O.Ms.No.73, dated 14-10-2003 communicating the final seniority list. Accordingly, an application was filed to amend the prayer challenging the final seniority list and the Tribunal allowed the said application amending the prayer.

13. In para-10 of the affidavit it was averred that the Tribunal heard the O.As. on 22-9-2004 and it was brought to the notice of the Tribunal that the issue regarding the seniority list of the Junior Lecturers was already decided by the Tribunal in O.A.No.325/99 and Batch. The relevant portions in the Judgment were also brought to the notice of the Tribunal and the Tribunal by its Judgment dated 29-10-2004 dismissed the O.As. on the ground that the Tribunal in its earlier Judgment did not give any specific finding that the Junior Lecturers appointed by transfer as Lecturers are not eligible for seniority from 1-4-1976 even though the Tribunal made observations. It was also further averred that any observations of the Tribunal in those O.As. cannot be construed to affect the Junior Lecturers not being eligible for seniority from 1-4-1976 and the Tribunal held :

> "The view taken by the Hon'ble Tribunal in the earlier O.As. is that as two impugned G.Os. do not confer any benefit relating to seniority on the Junior Lecturers who were appointed by transfer as Lecturers, the Assistant Lecturers can have no grievance. Though the Hon'ble Tribunal took the note of the Memo issued by the Commissioner of Collegiate Education in Rc.No.12/D.11-5/97, dated 27-1-1997 wherein it was clarified that the Junior Lecturers promoted and posted by transfer as Lecturers with retrospective effect from 1-4-1976 notionally pursuant to the Judgment of this Hon'ble Tribunal rendered in R.P.No.1705/87 and Batch dated 2-7-1993 will not have any right to claim seniority over the then Assistant Lecturers/Tutors/Demonstrators who were working in Government Degree College as on 31-3-1976 and later redesignated as Lecturers in the time scale of Rs.700-1600, the Hon'ble Tribunal did not record any finding that the Junior Lecturers appointed by transfer as Lecturers are not eligible for seniority from 1.4.76".

It was further averred that the Tribunal gravely erred in coming to such a conclusion. In the earlier Batch of O.As. the amendment of Rules issued in G.O.Ms.No.37 dated 5-2-1994 were challenged and basing on the said amendment only the Junior Lecturers were promoted notionally with retrospective effect. The Tribunal held that in view of the clarification of the Commissioner dated 27-1-1997 the Junior Lecturers are not entitled for seniority. The Tribunal also noted that in G.O.Ms.No.28 dated 22-1-1999 the Junior Lecturers were promoted as Lecturers only for the purpose of Career Advancement Scheme and the Tribunal in its earlier Judgment made it clear that had the intention of the Government was to confer any other benefit other than the Career Advancement Scheme the Government ought to have made it explicit. When the Tribunal made it clear that the orders of the Government will not affect the rights of the Assistant Lecturers designated as Lecturers, the Tribunal in the impugned Judgment gravely erred in holding that it did not give any specific finding regarding seniority.

14. W.P.No.20900/2004 also was filed by the writ petitioners impugning the Common Order aforesaid raising more or less same grounds. It is stated that the 1st and the 2nd writ petitioners are working as Lecturers in Government Degree College, Kurnool and the 3rd petitioner is the General Secretary of the of the Association wherein hundreds of Lecturers working in Government Degree Colleges including the writ petitioners 1 and 2 are the members. Writ petitioners 1 and 2 were designated as Lecturers by virtue of G.O.Ms.No.1072, dated 26-11-1976. It is stated that the 1st respondent issued a provisional seniority list by proceedings dated 20-2-2003 fixing the seniority of Lecturers giving notional promotion with effect from 1-4-1976 to Junior Lecturers who were promoted as Lecturers much later in point of time contrary to the Judgment of the Tribunal dated 9-2-2001 made

in O.A.No.1449/94 and O.A.No.325/99 & Batch which had been delivered after hearing all the concerned and thoroughly considered all the relevant G.Os. It is also stated that the writ petitioners 1 and 2 filed objections relating to the provisional seniority list dated 20-2-2003. The entire dispute is regarding giving notional promotions to some of the Junior Lecturers who were promoted even after 1980's and 1990's with effect from 1-4-1976. For this they take shelter under G.O.Ms.No.37 dated 5-2-1994 and G.O.Ms.No.423 dated 19-4-1979. It was further stated that by virtue of G.O.Ms.No.423 dated 19-4-1979 a channel for promotion of Junior Lecturers for the post of Lecturers had been opened satisfying certain qualifications and by virtue of the said channel for Junior Lecturers for promotion as Lecturers, certain Junior Lecturers were promoted as Lecturers by virtue of G.O.Ms.No.423 dated 19-4-1979 and they contend that they could have been promoted as Lecturers much earlier i.e., in the year 1976 itself and some of them contended that they sustained monetary loss too because of this situation. It is also stated that the Government in order to satisfy the promotees, monetary benefits like Career Advancement Scheme etc., had been extended to them terming the same as notional promotions with effect from 1-4-1976. The Government issued G.O.Ms.No.37 and G.O.Ms.No.28 in the years 1994 and 1999 respectively and these were challenged by Lecturers who were already serving as Lecturers and had put up more service as Lecturers than the Junior Lecturers who were promoted much later in point of time and became Lecturers contending that the Lecturer promotees who are having much less service as Lecturers may claim seniority also over and above the Lecturers who had already put up much more service as Lecturers if these G.Os. provide monetary benefits to the promotees/Junior Lecturers. Consequent upon issuance of G.O.Ms.No.37 dated 5-2-1994 and G.O.Ms.No.28 dated 22-1-1999, O.A.No.1449/94, O.A.No.1057/99 and O.A.No.325/99 & Batch were filed before the Tribunal attacking the said G.Os. and also Memo Rc.No.12/GC dated 27-1-1997 issued by the Commissioner of Collegiate Education. The Division Bench of the Tribunal while making an elaborate order dated 9-2-2001 observed categorically that the rights of the Lecturers i.e., their seniority, already working as Lecturers who are having much more service as Lecturers, be protected and their seniority over the Junior Lecturers who are promoted as Lecturers after successful screening by the D.P.C. and appointed as Lecturers much later in point of time i.e., after 1980, 1985 and 1990, will be juniors in service. It was further averred that subsequent to the order referred to supra declaring that the benefits such as Career Advancement Scheme, monetary benefits, were extended to Junior Lecturers/promotees also who were promoted after successful screening by D.P.C. selection and appointed as Lecturers will not affect the seniority of Lecturers who had already put in more service as Lecturers and the seniority over the Junior Lecturers/promotees should be protected and since the same became final no party preferred any appeal in view of the fact that the seniority had been well protected and the same is binding on all the parties. It is also further stated that the Government had issued clarification also in filling up the posts of Principals in Government Degree Colleges in Memo No.32620/HF/98-1 dated 21-6-2001 wherein it is categorically specified and clarified as hereunder :

> "It is clarified that the lecturers who are designated as Lecturers by way of merger of various categories of the then existing different categories of posts in Government Degree Colleges, consequent to the orders issued in G.O.Ms.No.1072, Education Department, dated 26-11-1976 shall be treated as senior to the

persons who are appointed as Lecturers by way of promotion from the category of Junior Lecturers in Government Junior Colleges, subsequently given promotion retrospectively with effect from 1-4-1976 which is notional in nature vide G.O.Ms.No.28, Education (U.E.II) Department dated 22-1-1999."

The above clarification of the Government and the proceedings of the Commissioner of Collegiate Education in Memo No.12/G.II/97 dated 27-1-1997 which was upheld by the Tribunal by the Judgment dated 9-2-2001 abundantly clarifies that the notional promotion given to the Junior Lecturer promotees for the purpose of monetary benefits like Career Advancement Scheme etc., should not affect the rights of the Lecturers who were designated as Lectures by virtue of G.O.Ms.No.1072 dated 26-11-1976 and having much more service as Lecturers and their seniority should be protected over the Junior Lecturer promotees who are screened and selected by D.P.C. and appointed as Lecturers much later (after 1980, 1985 and 1990 and so on). It was further stated that the official respondents had taken a U turn completely against the spirit of the Judgment of the Batch aforesaid and issued a provisional seniority list dated 20-2-2003 giving notional promotion benefits to the seniority also and further the 1st respondent directed the 2nd respondent to fill up all the vacancies of Principals by way of adhoc promotions giving effect to the notional promotions to seniority also in Memo No.SP/1924/E.E.I.1/2003-5, dated 13-6-2003. Aggrieved by the same, some of the Lecturers had filed O.A.No.3892/2003 and the Tribunal was also pleased to suspend the same. It was further stated that the 3rd petitioner representing Government College Teachers Association had given number of representations including the representations dated 31-10-2002, 12-3-2003, 12-6-2003 and 9-10-2003 at various levels including the 1st respondent and the Hon'ble Minister for Higher Education, Government of A.P., but in vain. Surprisingly the Minister of Higher Education held a meeting with the 3rd petitioner herein on 14-7-2003 and assured regarding inter-se seniority of Lecturers and to examine the representations and to obtain the views of General Administration and Law Departments thereon but to the shock and dismay of the petitioners it is learnt that neither the views of the general Administration Department nor the Law Department were obtained prior to the issuance of impugned G.O. It is also stated that a contempt case was also filed and the same was numbered as C.A.S.R.No.13160/2003 for floating the Judgment of the Tribunal dated 9-2-2001 in O.A.No.1507/99, O.A.No.1449/94, O.A.No.325/99 and Batch. It is further averred to the surprise of the writ petitioners, the 1st respondent had finalized the seniority list in G.O.Ms.No.73, dated 14-10-12003 giving notional promotion to seniority also to the Junior Lecturers/promotees with effect from from 1-4-1976 and the same had been questioned as being arbitrary, unjust, unfair, unconstitutional and contrary to the very spirit of the Judgment made in O.A.No.1449/94 and O.A.No.325/99 & Batch. Several other details which had been narrated also are substantially the same which had been referred to supra and the said details need not be repeated again.

15. A common counter affidavit was filed by the respondents 1 and 2. Specific stand was taken justifying G.O.Ms.No.73 and the finalisation of the seniority list. It is stated that the petitioners in W.P.No.20900/2004 were all redesignated as Lecturers with effect from 9-10-1977, 18-9-1977 and 1-10-1978 respectively in terms of G.O.Ms.No.1072, Education, dated 26-11-1976. The integrated seniority list of Lecturers published by Government through G.O.Ms.No.73, Education, dated 14-10-2003 was prepared with reference to 1-4-1976. The petitioners in both the Writ Petitions having been redesignated as Lecturers on a date subsequent to 1-4-

1976 cannot say that the Junior Lecturers figured in the seniority list of 1-4-1976 are not seniors to them. It is stated that the grievance of the petitioners in both the Writ Petitions is that the Junior Lecturers who were actually promoted as Lecturers in the year 1981 were given 1-4-1976 as the date of notional promotion and were given seniority from 1-4-1976 which adversely affected the seniority claims of the petitioners. It was further averred that the Government introduced two year Intermediate Course from the academic year 1969-70 duly replacing the pre-university course in degree colleges and 11th and 12th classes in higher secondary and multi-purpose schools. The Junior Lecturers were to teach Intermediate Classes and the posts of Junior Lecturers were covered by the adhoc rules issued by the Government in G.O.Ms.No.939, Education, dated 19-9-1972. The Junior Lecturers were posted to composite Degree Colleges in order to teach Intermediate classes. Similarly the vacant posts of Lecturers, Assistant Lecturers and Tutors/Demonstrators in Degree colleges were also filled in by posting Junior Lecturers in their own scale of pay to avoid dislocation in academic instructions. It was further averred that the Government of Andhra Pradesh by its order in G.O.Ms.No.1072, Education, dated 26-11-1976 revised the pay scales of all the teachers working in Universities and Degree Colleges in the State during the year 1976 with effect from 1-4-1976. By G.O.Ms.No.1072, Education, dated 26-11-1976 the Government ordered merger of different categories like Readers, Heads of Departments, Senior Lecturers, Lecturers (Senior Scale), Lecturers (Junior Scale), Assistant Lecturers and Junior Lecturers existing among the teachers working in Degree and P.G. Colleges into one category of Lecturer in the revised pay scale of Rs.700-1600 with effect from 1-4-1976. The applicability of the said revised scale to various categories of teachers including that of Assistant Lecturers, Tutors/Demonstrators and Junior Lecturers shall be subject to the conditions specified in Column No.6 of Annexure-I to G.O.Ms.No.1072, Education, dated 26-11-1976. According to the conditions specified in column No.6 of Annexure-I, the Assistant Lecturers and Tutors and Demonstrators will come to the scale of Rs.700-1600 after completion of 3 years and 5 years of service respectively. But, according to para 4(d) of Column No.6 of Annexure-I, the posts of Junior Lecturer in Government Degree Colleges with Intermediate courses will be converted into that of Lecturers in the revised pay scale of 1976 and taking into consideration the subject and the over all inter-se seniority of Junior Lecturer in that subject, the senior most Junior Lecturer will be promoted in conformity with the Presidential Order to these posts of Lecturers under revised pay scale of 1976 after their work and performance are assessed by the D.P.C. and if they are found fit and suitable. In this context, it was averred that the post of Lecturer in Government Degree Colleges is governed by A.P. Educational Service Rules issued in G.O.Ms.No.259, GAD, dated 9-2-1962. The post comes under category 2 of Class IV in the A.P. Educational Service Rules. The post of Assistant Lecturer in A.P. Educational Subordinate Service Rules (Category.1 of Class I) was the feeder category to the post of lecturer in Degree colleges. The post of Assistant Lecturer was filled in by direct recruitment or by promoting Tutors and Demonstrators. Therefore the post of Junior Lecturer not being a feeder category, the Junior Lecturer did not have promotional avenues by the time G.O.Ms.No.1072, Education, dated 26-11-1976 was issued. Thus it had become necessary to provide avenues to the Junior Lecturers for promotion as lecturers keeping in view the orders of the Government in G.O.Ms.No.1072, Education, dated 26-11-1976. As such the Government through G.O.Ms.No.423, Education, dated 19-4-1979 brought an amendment to A.P. Educational Service Rules issued

under G.O.Ms.No.259, GA Rules dated 9-2-1962 making a provision for recruitment by transfer as Lecturers from among the Junior Lecturers in A.P. Educational Subordinate Service Rules. As per these orders each subject in a zone is constituted as one unit and out of every four vacancies arising in such unit in the subject, the second vacancy is filled in by Direct Recruitment and first, third and fourth vacancies are filled in by recruitment by transfer among the Junior Lecturers working in Government Junior Colleges. In pursuance of these orders, promotions were ordered to the Junior Lecturers for the first time in the year 1981 and from 1981 onwards the Junior Lecturers are being recruited by transfer as Lecturers.

16. It was further stated that that certain Junior Lecturers working in Government Degree Colleges filed R.P.No.1705/87 with a request to direct the respondents to treat their services as Junior Lecturers in Degree Colleges as continuous and declare them entitled to the scale of Rs.700-1600 from the dates on which they completed 3 years of service as Junior Lecturers in Degree Colleges. The Tribunal in its Judgment dated 2-7-1993 in the above R.P. made the following order :

> "We conclude that the petitioners, as Junior Lecturers in Degree Colleges are not entitled for declaration or direction to grant them the UGC pay scale (revised pay scale, 1976) as a matter of right, simply because they happen to work in Degree Colleges, without complying with the requirement laid down in law and the instructions issued in G.O.Ms.No.1072 or irrespective of the seniority in the category of Junior Lecturers and without being processed by the D.P.C. The respondents are directed to conduct the exercise contemplated in G.O.Ms.No.1072 and the subsequent instructions on the subject as expeditiously as possible and in any event within a period of six months from the date of receipt of copy of this Judgment".

It is stated that in order to comply with the directions of the Court, the Government in G.O.Ms.No.37, Education, dated 3-2-1994 issued amendment to A.P. Educational Service Rules by giving retrospective effect to the provisions of G.O.Ms.No.423, Education, dated 19-4-1979 from 1-4-1976. The Government had further explained that by G.O.Ms.No.28, Education, dated 22-1-1999 orders were issued upgrading a total of 228 posts of Junior Lecturers as Lecturers in terms of G.O.Ms.No.1072, Education, dated 26-11-1976 and further ordered that the Junior Lecturers promoted as Lecturers in the year 1981 be given 1-4-1976 as the date of their promotion. Similarly, another 362 Junior Lecturers promoted as Lecturers in the year 1981 be given 1-4-1976 as the date of their promotion. Similarly, another 362 Junior Lecturers promoted during the year 1981 and 112 Junior Lecturers promoted during the year 1982 be given 1-4-1977 and 1-4-1978 as the dates of their promotion. All these retrospective dates of promotion shall be notional in nature and the notional promotion period shall be counted for Career Advancement Scheme only. Against this order of the Government, O.A.No.1449/94 and O.A.No.325/99 and Batch were filed before the Tribunal challenging G.O.Ms.No.37, Education, dated 3-2-1994, G.O.Ms.No.28, Education, dated 22-1-1999 and proceedings Rc.No.12/GC.II-5/97, dated 27-1-1997 of the Commissioner of Collegiate Education wherein it was clarified that the retrospective promotion on notional basis with effect from 1-4-1976 will not confer any right on them to claim seniority over the Assistant Lecturers, Tutors/Demonstrators working on 31-3-1976 and redesignated as Lecturers with effect from 1-4-1976. The Tribunal on 9-2-2001 disposed of the O.As. sustaining the orders of the Government in G.O.Ms.No.28, Education, dated 22-1-1999 and G.O.Ms.No.37, Education, dated 3-2-1994 as the said orders of the Government do not adversely affect the rights of any of the individuals. In the Judgment dated 29-10-2004

against which the present Writ Petitions are filed, the Tribunal while sustaining G.O.Ms.No.37, Education, dated 3-2-1994 and G.O.Ms.No.28, dated 19-4-1979 observed :

> "As regards the contention on behalf of the applicants that giving seniority to the Junior Lecturers appointed by transfer as Lecturers with effect from 1-4-1976 is contrary to the Judgment of the Tribunal in O.A.No.325/99 and Batch, it is to be noted that in the above O.As. the Tribunal had considered the validity of G.O.Ms.No.37, Education, dated 5-2-1994 wherein a provision was made under the rules for appointment by transfer to Junior Lecturers as Lecturers with effect from 1-4-1976 and G.O.Ms.No.28, Education, dated 26-11-197f6 and all the 228 Junior Lecturers who were promoted as Lecturers in the year 1981 be given 1-4-1976 as the date of their promotion. The Tribunal as far as the above two G.Os. are concerned held that when the Government provided promotion channel from APESS to APES by recruitment by transfer, there is nothing wrong in issuing G.O.Ms.No.28, Education, dated 22-1-1999 and by virtue of the Judgment of the Tribunal in R.P.No.1705/87 dated 2-7-1993, the Government have no option except to provide the promotional channel. The Tribunal also observed that when other categories of teachers were merged into one category of Lecturers by virtue of G.O.Ms.No.1072, Education, dated 26-11-1976, they have to necessarily give effect to such orders from 1-4-1976. As G.O.Ms.No.28, dated 22-1-1999 deals with subject relating to CAS and not seniority, the Tribunal held that Assistant Lecturers can have no grievance in regard to the above G.O. The view taken by the Tribunal in the earlier O.As. is that as two impugned G.Os. do not confer any benefit relating to seniority on the Junior Lecturers who were appointed by transfer as Lecturers, the Assistant Lecturers can have no grievance. Though the Tribunal took note of the Memo issued by the Commissioner of Collegiate Education, Rc.No.12/GC-II-5/97, dated 22-1-1997 wherein it was clarified that Junior Lecturers promoted and posted by transfer as Lecturers with retrospective effect from 1-4-1976 notionally pursuant to the Judgment of this Tribunal rendered in R.P.No.1705/87 and Batch dated 2-7-1993 will not have any right to claim seniority over the then Assistant Lecturers/Tutors/Demonstrators who were working in Government College as on 31-3-1976 and later redesignated as Lecturers in the time of scale of Rs.700-1600, the Tribunal did not record any finding that Junior Lecturers appointed by transfer as Lecturers are not eligible for seniority from 1-4-76".

In view of the above observation of the Tribunal the contention of the petitioners that the Judgment dated 9-2-2001 in O.A.No.1449/99 and O.A.No.325/99 and 7824/97 and Batch had become final as the said Judgment declared that the benefits such as Career Advancement Scheme etc., monetary benefits were extended to Junior Lecturer promotees also who were promoted after successful screening by the D.P.C. selection and appointed as Lecturers will not affect the seniority of the Lecturers who are already having much more service as Lecturers and the seniority over the Junior Lecturer promotees should be protected and that the same became final and no party preferred any appeal as the Lecturers seniority is protected and binding on all the parties is not correct as the Tribunal did not record any finding that the Junior Lecturers appointed in the year 1981 and given retrospective effect to such promotion from 1-4-1976 notionally are eligible for seniority from 1-4-1976.

17. It was also further averred that the Government by Memo No.32620/HE/98-12, dated 21-6-2001 clarified that the Lecturers who are designated as Lecturers by way of merger of various categories of the then existing different categories of posts in Government Degree Colleges consequent to the order issued in G.O.Ms.No.1072, Education, dated 26-11-1976 shall be treated as senior to the persons who are appointed as Lecturers by way of promotion from the category of Junior Lecturers in Government Junior Colleges, subsequently given promotion retrospectively with effect from 1-4-1976 which is notional in nature through G.O.Ms.No.28, Education, dated 22-1-1999. However the Government subsequently through Memo No.3557/CE.1/2001/1, dated 16-9-2002 ordered to prepare a temporary seniority list of Lecturers with reference to Rules 33 and 36 of A.P. State & Subordinate Service Rules. With this decision of the Government, the earlier clarification given by the Government in Memo No.32620/HE/98-12, dated 21-6-2001 gets superceded. In this regard it is explained that according to Rule 33(c) of A.P. State & Subordinate Service Rules, the notional date of promotion shall be taken into consideration for computing the qualifying length of service in the feeder category

for promotion to the higher category and that the notional service shall be counted for the purpose of declaration of probation also in the feeder category. According to Rule 36 of A.P. State & Subordinate Service Rules, if the date of probation is the same the elder person shall be regarded as senior. Accordingly an integrated provisional seniority list of the erstwhile Assistant Lecturers, redesignated as Lecturers from 1-4-1976, Tutors and Demonstrator absorbed as Lecturers from 1-4-1976 and the Junior Lecturers promoted as Lecturers retrospectively from 1-4-1976 and were in service as on 1-2-2003 was prepared and communicated to all the Lecturers concerned through proceedings Rc.No.1655/Ser.II-3/2003, dated 20-2-2003 with a direction to submit their objections if any. Hence the contention of the petitioners that the provisional seniority list was prepared contrary to the Judgment dated 9-2-2001 is not correct as the Tribunal did not record any finding that the Junior Lecturers promoted as Lecturers in the year 1981 and given effect to the said promotions notionally from 1-4-1976 by G.O.Ms.No.28, Education, dated 22-1-1999 are not eligible for seniority from 1-4-1976.

18. It was further also further stated at para-8 of the common counter affidavit that aggrieved by the said seniority list dated 20-2-2003, Sri P.Beeraiah, Lecturer in Commerce, IP, GDC(W), Nampally Hyderabad and four others filed O.A.No.1264/2003 in the Tribunal with a prayer to quash the impugned proceedings Rc.No.1655/Ser.II-3/2000, dated 20-2-2003 of the 2nd respondent and the Tribunal on 7-3-2003 granted the following interim relief :

> "Pending further orders in the O.A. the applicants are directed to file a representation to the 1st respondent within one week from the date of receipt of the order and the 1st respondent is directed to consider the representation of the applicants with reference to their objections in respect to Proceedings Memo No.3557/CE.I-1/2000-1, dated 16-9-2002 of the Government and Proceedings Rc.No.1655/Ser.II-3/2000 dated 2-2-2003 of the Director of Collegiate Education within four weeks thereafter. However, the pendency of this O.A. does not preclude the Government to proceed with finalisation of the seniority list."

Aggrieved by the said interim relief granted by the Tribunal, the applicants viz., Sri P.Beeraiah, Lecturer in Commerce and four others in O.A.No.1264/2003 filed W.P.No.5172/2003 in Andhra Pradesh High Court duly praying (a) to quash or set aside the orders dated 7-3-2003 of the Tribunal and extended subsequently in O.A.No.1264/2003 (b) to direct the respondents 1 and 2 to refrain from preparing or publishing any seniority list in terms of Memo No.3557/CE.I-1/2001-1, dated 16-9-2002 of the State Government (c) to direct respondents 1 and 2 not to act contrary to the decision rendered by the Tribunal in its Judgment dated 9-2-2001 in O.A.No.6342/97 and Batch of cases by conferring right of seniority over them to the notionally promoted Junior Lecturers over and above the Assistant Lecturers/Tutors/Demonstrators who were holding such posts as on 31-3-1976 and claim to be redesignated as Lecturers subsequently and pass such order or further orders as are deemed fit and proper in the circumstances of the case. This Court on 7-4-2003 disposed of the said W.P.No.5172/2003 with the following order :

> "WPMP Nos.7576 and 7395 of 2003 are allowed. Heard the learned Counsel for parties and newly added parties also, who have agreed to passing of an order modifying the order of the Tribunal. We do not refer to the detailed facts leading to filing of this Writ Petition. With the agreement of the learned Counsel for the parties, we direct that the representation of the applicants before the Tribunal which have already been made shall be considered by the official respondents and an order shall be passed on those representation. Before passing an order on those representations, the official respondents shall not finalise the seniority list. The order of the Tribunal is accordingly modified. This order shall remain operative till the disposal of the O.A. The WP is accordingly disposed of".

19. It was further averred at para-9 of the counter affidavit that Sri J.Sambaiah had filed O,.A.No.3820/2003 with a prayer to quash Memo No.SP/1924/CE.I-1/2003-5, dated 13-6-2003 and the Tribunal on 25-6-2003 though suspended the memo ordered that it does not preclude the Government from following the interim directions of the Tribunal in O.A.No.1264/2003 as modified by the this Court in W.P.No.5172/2003 dated 7-4-2003. In O.A.No.3892/2003 filed by Smt.K.Mythili, Lecturer in Zoology of Government Degree College (M), Srikakulam, the Tribunal on 26-6-2003 ordered the above interim orders in the said O.A. also. Keeping in view the above court orders, the Government in Memo No.SP.1924/CE.I-1/03-(10 to14) dated 25-8-2003 disposed of the representations of the applicants who ever represented duly rejecting their claims as there is provision in Rule 33(c) of A.P. State and Subordinate Service Rules for counting the notional period of promotion for the purpose of seniority. Subsequently the Government by its order in G.O.Ms.No.73/HE, dated 14-10-2003 published the final integrated seniority list of Lecturers with reference to 1-4-1976. The petitioners in W.P.No.20900/2004 filed O.A.No.6785/2003 before the Tribunal against the orders in G.O.Ms.No.73, HE, dated 14-10-2003 and some other Lecturers also filed O.A.Nos.6996/2003 and 8578/2003 with similar prayer and the Tribunal on 5-11-2003 made an interim order in O.A.Nos.6785/2003 and 6996/2003 as follows :

> "Pending finalisation of the O.As., it is ordered that the promotions of the posts of Principals shall not be made even on adhoc basis based on the seniority list of Lecturers published through G.O.Ms.No.73, Education, dated 14-10-2003. However, this does not preclude the Government from filling up of the posts of Principals by posting Lecturers in the cadre of Lecturers on their own pay, against the posts of Principals".

Aggrieved by the said interim order, Smt.P.B.Nalini Sukumari and some other Lecturers filed Batch of Writ Petitions in W.P.Nos.24617, 24618, 24905, 25093 and 26059 before this Court and this Court on 3-12-2003 set aside the interim order of the Tribunal and passed the following interim order :

> "Pending finalisation of the O.As., it is open for the Government to promote the eligible Lecturers on adhoc basis to the vacant posts of Principals. However, the same shall be subject to the result in Batch of O.As. pending before the Tribunal. The Tribunal shall dispose of the O.As. within a period of two months from the date of receipt of this order. It is further made clear that the adhoc promotions shall not count for any purpose nor the adhoc promotees shall claim any equities after the matters are disposed of by the Tribunal."

Keeping in view the above orders of this Court, 87 Lecturers had been promoted as Principals with reference to G.O.Ms.No.73, Education, dated 14-10-2003. The Tribunal on 29-10-2004 disposed of O.A.Nos.6785/2003, 6996/2003, 8578/2003 and also 1264/2003 filed by the petitioners in W.P.No.20706/2004 duly upholding the final seniority list published by the Government in G.O.Ms.No.73, HE, dated 14-10-2003 and the observations made by the Tribunal also had been pointed out. Specific stand was taken that the petitioners in both the Writ Petitions were redesignated as Lecturers with effect from 9-10-1977, 18-9-1977, 1-10-1978, 11-5-1978, 30-1-1977, 2-4-1978 and 14-4-1976 respectively with reference to G.O.Ms.No.1072, Education, dated 26-11-1976 and whereas the final seniority list published in G.O.Ms.No.73, HE, dated 14-10-2003 was prepared with reference to 1-4-1976 duly counting the notional period of promotion for seniority and hence the petitioners having been redesignated on a date subsequent to 1-4-1976 cannot question the said seniority and the orders passed by the Government which was confirmed by the Tribunal as legal, valid and there are no valid grounds to interfere with the impugned order under Article 226 of the Constitution of India.

20. In W.P.No.20706/2004, respondents 8 to 10 filed a counter affidavit taking a specific stand that the affected parties were not impleaded as parties and the 1st petitioner is not qualified to hold the post of Principal since he does not possess Ph.D. It was also pleaded that the post of Junior Lecturer was governed by separate rules, but the allegation that Junior Lecturers were not in lower scale is misleading. Some of the Junior Lecturers filed R.P.No.1705/87 and Batch claiming that they are entitled to U.G.C. pay scales of Lecturer on the ground that they had completed more than three years of service but the Tribunal by its Judgment dated 2-7-1993 while holding that the Junior Lecturers are not entitled to seniority automatically issued directions that a D.P.C. should be convened and after regular selection they should be converted as Lecturers from the date of their eligibility. As at the relevant point of time, the A.P. Collegiate Service Commission was the Recruiting Agency for the post of Lecturer as per the Rules, basing on the above said Judgment, the A.P. Collegiate Service Commission after calling for the confidential reports and after duly considering the eligibility and seniority of the Junior Lecturers, they were considered and they were given retrospective promotion from the date of their eligibility in the years 1994 and 1995. These orders giving retrospective promotions had never been challenged either in the Tribunal or before this Court. It was also stated that G.O.Ms.No.37, dated 3-2-1994 had been given respective effect from 1-4-1976. G.O.Ms.No.37 and thereafter the amendment giving it retrospective effect had been challenged before the Tribunal but the said O.As. were dismissed and G.O.Ms.No.37 was upheld and the said Judgment had become final. Basing on the same, the College Service Commission which is the competent authority had effected promotions with retrospective effect from 1-4-1976. In fact, the clarification of the Commissioner of Education, dated 27-1-1997 does not have any binding effect and it is contrary to the statutory rules. However the said clarification was kept in abeyance by the same Commissioner himself. Further a specific stand was taken that placing reliance on the Judgment in O.A.No.325/99 and Batch is misplaced. It was explained that in fact what was challenged in the O.A. was G.O.Ms.No.28, dated 22-1-1999 and also G.O.Rt.No.1432 dated 25-9-1997. G.O.Ms.No.28, dated 22-1-1999 dealt with counting of notional service for Career Advancement Scheme. It neither dealt with seniority vis-à-vis Assistant Lecturer promotee Lecturers nor did it fix any seniority between various persons. G.O.Ms.No.1432 specifically dealt with counting of notional service for the purpose of seniority of three people viz., Sri S.D.Subba Reddy, Sri Abdul Quadri Hussain and Sri V.Ramakrishna Sastry. The issue in the said G.Os. was whether the notional service should be reckoned for the purpose of career advancement scheme and the inter-se seniority was never in issue. When the said G.Os. were questioned in the Batch of O.As., the Tribunal held that as the said G.Os. dealt with Career Advancement Scheme only and not with respect to any seniority, the applicants therein could not have been affected by the said G.Os. and dismissed the O.As. However the petitioners tried to rely on the said Judgment as if orders had been issued in their favour. Specific stand was taken that placing reliance on memo No.32670/EH/98-12, dated 21-6-2001 is absolutely misleading. Further in the counter affidavit specific stand was taken that the post of Junior Lecturer is also one of the feeder categories for promotion to the post of Lecturer. As per G.O.Ms.No.1072, dated 20-11-1976, all categories of teachers viz., Junior Lecturers, Assistant Lecturers, Tutors and Demonstrators were merged into one category of Lecturer and consequently all the above categories of posts were abolished. In fact, the Assistant Lecturers were redesignated as Lecturers contrary to the statutory rules. As far as Junior Lecturers are

concerned, some of the Junior Lecturers had approached the Tribunal by filing R.P.No.1705/87 as already submitted wherein the Tribunal by its Judgment dated 2-7-1993 directed the Government to consider the cases of Junior Lecturers for promotion as Lecturers after constituting a D.P.C. and the names of respondents 8 to 10 were put up before the A.P. College Service Commission which considered their cases and they were promoted with retrospective effect from 1-4-1976 in the year 1995 itself and these promotions had been challenged and they had become final. It was further stated that in all cases where promotions had been denied on account of administrative lapse, the authority can reconsider and give notional benefits including seniority and promotion with retrospective effect. It was further stated that once a person is entitled to Career Advancement Scheme it is ridiculous to say that he will not be entitled to seniority. It is always open to the Government to correct its mistake at any time. The Government considered Rule 33 of A.P. State and Subordinate Service Rules and appears to have come to the conclusion that the notional service has to be reckoned for the purpose of seniority and accordingly a provisional seniority list was given which was questioned before the Tribunal and the Tribunal refused to grant any stay. When a Writ Petition was filed this Court also refused granting of stay but directed that till representations were disposed of, the provisional seniority list should not be acted upon. Now, the final seniority list had been issued after hearing and considering various representations and it had been held that the Junior Lecturers appointed by transfer as Lecturers should be given notional service rendered by them for the purpose of seniority. Accordingly the respondents 8 to 10 were given seniority. It was further stated that the Government issued the final seniority list after considering various representations made and also with reference to the rules and the Assistant Lecturers promoted as Lecturers cannot and should not have any grievance in respect of seniority. Further specific stand was taken that the Tribunal doubted the very appointment of Assistant Lecturers as Lecturers but however did not interfere with the same because of long lapse of time and hence such parties have no competency to question the seniority settled by G.O.Ms.No.73 aforesaid.

21. The question involved in the Writ Petitions ultimately boils down to whether the final seniority list settled in pursuance of G.O.Ms.No.73 conferring seniority on unofficial respondents and certain other similarly placed persons with retrospectivity from 1-4-1976 by virtue of G.O.Ms.No.73 to be confirmed or to be disturbed. Since the said G.O. is under serious attack, it may be appropriate to have a look at the said G.O. which had been impugned in the O.As. which reads as hereunder :

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

A.P.E.S. – Integrated seniority list of Lecturers working in Government Degree Colleges with the common date of notional promotion/redesignation with effect from 1-4-1976 – Finalisation of seniority list – Orders – Issued.

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G.O.Ms.No.73 Dated : 14th October, 2003

Read the following :

1. Govt.Memo No.3557/CE.I.1/2000-1, Higher Education Department, dated 16-9-2002.
2. Proceedings Rc.No.1655/Ser.II.3/2000 dated 20-2-2003 of the Director of Collegiate Education, A.P., Hyderabad.
3. Interim orders dated 7-3-2003 and 21-3-2003 of the A.P.A.T. in O.A.No.1264/2003 filed by Sri P.Beeraiah and others.
4. Order of the A.P. High Court dated 7-4-2003 in W.P.No.5172/2003 filed by Sri P.Beeraiah and others.
5. Interim orders dt.8-4-2003, 22-4-2003 and 30-4-2003 of the A.P.A.T. in O.A.No.2106/2003 filed by Sri Malleswara Rao and another.
6. Interim orders dt.23-4-2003 of A.P.A.T. in O.A.No.2154/2003 filed by Sri N.Krishna Reddy and 7 others.
7. Govt.Memo No.SP/1924/CE.I.1/2003-5, Higher Education, Department, dated 13-6-2003.
8. Interim order dt.25-6-2003 in O.A.No.3820/2003 filed by Sri J.Sambaiah, Lecturer in Commerce and 2 others.
9. From the Director of Collegiate Education, A.P., Hyderabad, Lr.Rc.No.1655/Ser.II.3/2000, dated 9-7-2003.
10. Govt.Memo No.SP/1924/CE.I.1/2003-10, Dt.25-8-2003
11. Govt.Memo No.SP/1924/CE.I.1/2003-11, Dt.25-8-2003
12. Govt.Memo No.SP/1924/CE.I.1/2003-12, Dt.25-8-2003
13. Govt.Memo No.SP/1924/CE.I.1/2003-13, Dt.25-8-2003
14. Govt.Memo No.SP/1924/CE.I.1/2003-14, Dt.25-8-2003
15. Govt.Memo No.SP/1924/CE.I.1/2003-15, Dt.25-8-2003
16. Govt.Memo No.SP/1924/CE.I.1/2003-16, Dt.25-8-2003
17. Govt.Memo No.SP/1924/CE.I.1/2003-17, Dt.25-8-2003
18. Govt.Memo No.SP/1924/CE.I.1/2003-18, Dt.25-8-2003
19. Govt.Memo No.SP/1924/CE.I.1/2003-19, Dt.25-8-2003
20. Govt.Memo No.SP/1924/CE.I.1/2003-20, Dt.25-8-2003
21. Govt.Memo No.SP/1924/CE.I.1/2003-21, Dt.25-8-2003
22. Govt.Memo No.SP/1924/CE.I.1/2003-22, Dt.25-8-2003
23. Govt.Memo No.SP/1924/CE.I.1/2003-23, Dt.25-8-2003
24. Govt.Memo No.SP/1924/CE.I.1/2003-24, Dt.25-8-2003
25. From the D.C.E. Lr.Rc.No.686/Ser.II.3/2003, dt.1-10-2003.

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ORDER:

The Government have issued instructions in the Govt.Memo No.3557/CE.I.1/2001-1, dt.16-9-2002 to the Director of Collegiate Education, A.P., Hyderabad to prepare a temporary seniority list of various categories of College Teachers as per the Rules 33 and 36 of the A.P. State and Subordinate Service Rules. Accordingly, the Director of Collegiate Education, A.P., Hyderabad in his proceedings No.1655/Ser.II.3.2000 dt.20-2-2003 has issued the provisional seniority list of the Lecturers of the Government Degree Colleges.

2. Challenging the provisional seniority list some of the Lecturers have approached the A.P.A.T. The A.P.A.T. in its order dt.17-3-2003 in O.A.No.1264/2003 filed by P.Beeraiah and 4 other Lecturers has ordered as follows :

"pending further order in the O.A. the applicants are directed to file a representation to the 1st respondent within one week from the date of receipt of the order and the 1st respondent is directed to consider the representation of the applicants with reference to their objections in respect of Progs.Memo No.3557/CE.I.1/2001, dt. 16-9-2002 of the Government and Progs.Rc.No.1655/Ser.II.3/2000, dt.20-2-2003 of the Director of Collegiate Education within four weeks thereafter. However, the pendency of this O.A. does not preclude the Government to proceed with finalisation of the seniority list".

3. The Tribunal in its order dt.21-3-2003 in O.A.No.1264/2003 filed by Sri P.Beeraiah and others extended the said relief until further orders. Aggrieved by the above orders, the applicants have approached the A.P. High Court with a prayer to quash the interim orders dt.7-3-2002 and 21-3-2003 of the A.P. A.T. The A.P. High Court in its orders dt.7-4-2003 in W.P.No.5172/2003 has directed as follows:-

"WPMP No.7576 and 7395 of 2003 are allowed. Learned Counsel for parties and newly added parties also, who have agreed to passing of an order modifying the order of the Tribunal, we do not refer to the detailed facts leading to filing of this Writ Petition. With the agreement of the learned Counsel for the parties, to direct that the representations of the applicants before the Tribunal, which have already been made shall be considered by the official respondents and an order shall be passed on those representations. Before passing an order on these representations, the official respondents shall not finalise the seniority list. The order of the Tribunal is accordingly modified. This order shall remain operative till the disposal of the O.A. The Writ Petition is accordingly disposed of".

4. Further, the Tribunal in its interim orders dt.23-4-2003 in O.A.No.2154/2003 filed by Sri N.Krishna Reddy and 7 others has ordered as follows :-

"pending further orders, the Respondents are directed to finalise the seniority list after considering the objections of the applicants".

5. The A.P.A.T. in orders dt.30-4-2003 in O.A.No.2106/2003 filed by Sri P.Malleswara Rao, Lecturer and another has ordered as follows:-

"Pending further orders, the Official Respondents are directed to pass orders on the representations and thereafter finalise the seniority list".

6. In Govt.Memo No.SP/1924/CE.I.1/2003-5, Higher Education Deptt., dt.13-6-2003, orders have been issued authorizing the Director of Collegiate Education, A.P. Hyderabad to dispose of the objections filed by the appellants as ordered by the A.P.A.T. and A.P. High Court and to communicate the final seniority list.

7. The said Government orders have been challenged by Sri J.Sambaiah and 2 other Lecturers in the A.P.A.T. by filing O.A.No.3820/2003. The A.P.A.T. in its order dt.25-6-2003 suspended the above Govt. Memo dt.13-6-2003. However, the Tribunal observed that the above orders do not preclude the Government from implementing the interim orders of the Tribunal in O.A.No.1264/2003 as modified by the A.P. High Court in W.P.No.5172/2003 dt.7-4-2003.

8. The matter has been examined in the light of various orders of A.P.A.T./A.P. High Court referred to above and the representations/objections filed by the applicants/petitioners and the same have been disposed of by rejecting their claims duly indicating the reasons therefor and communicated to the concerned though the Govt. Memo from 10th to 24th read above. Similarly, the other representations received from several other Lecturers have been examined and it is considered to include the names of certain Lecturers who are found eligible for such inclusion in the integrated seniority list as on 1-4-1976.

9. Accordingly, in pursuance of the orders of the A.P.A.T./A.P. High Court referred to above, and after taking into consideration the objections filed by all the affected parties, the Government hereby approve the Integrated Seniority list of Lecturers working in Government Degree Colleges with the common date of notional promotion/redesignation with effect from 1-4-1976 as shown in the Annexure to this Order subject to final outcome of the O.As./W.Ps. pending in the A.P.A.T. and A.P. High Court.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

G.SUDHIR

PRINCIPAL SECRETARY TO GOVERNMENT"

It may also be appropriate to have a look at the relevant portion of Annexure-I to G.O.Ms.No.1072, dated 26-11-1976 whereunder the Government accepted the 3 Man Committee recommendation and issued A.P. Revised Pay Scales 1976 orders, as hereunder :

Sl.No.			Category	Pre-D.A.M
3	4.	5.	AssistantLecturers/Lecturers(Junior Scale) Junior Lecturers working in Degree Colleges 250-15-400	300-25-600 15-320-20 Rs.260/-

It may also be relevant to have a look at G.O.Ms.No.423, G.O.Ms.No.37 and G.O.Ms.No.28, which read as hereunder :

G.O.Ms.No.423:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Andhra Pradesh Educational Service – Class IV – Collegiate Section – Amendments to the Special Rules for Andhra Pradesh Educational Service – Issued.

EDUCATION (M.1) DEPARTMENT

G.O.Ms.No.423 Dated : 10-4-1979

Read the following :

1. G.O.Ms.No.258, G.A. (Rules) Department, dt.9-2-1962.
2. G.O.Ms.No.1072, Education (W) Department, dt.26-11-1976.
3. G.O.Ms.No.729, Education (C) Department, dt.3-7-1978.
4. G.O.Ms.No.817, Education (C) Department, dt.7-8-1978.
5. From the DHE Lr.No.535/C3-3/79, dt.8-2-1979.

ORDER:

The following notification will be published in the Andhra Pradesh Gazette :

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Praesh hereby makes the following amendments to the Special Rules for the Andhra Pradesh Educational Services published with the General Administration (Rules) Department Notification No.97, dated the 22nd March, 1962.

AMENDMENTS

In the said rules :

i) In rule 2

a) In the Table against the entry category 2 of Class IV in col.(1)(a) for the existing words in column (3) against item (2) there of the following words shall be submitted, Namely :

"Recruitment by the transfer from among Junior Lecturers in the Andhra Pradesh Educational Subordinate Service"

b) Existing (3) in column 2, and the entry against the same in col.(3) thereof shall be omitted.

ii) For the existing Note (8) below the Table the following Note shall be substituted, namely :-

"8. In making appointments to the Service in Category 2 of Class IV posts for which qualifications in a particular subject or Language are prescribed and shall be regarded as constituting one unit and out of every 4 vacancies arising in such unit the second vacancy shall be filled by direct recruitment and the first, third and fourth vacancies shall be filled by recruitment by transfer from among Junior Lecturers in the Andhra Pradesh Educational Subordinate Service".

2) In the Table under rule 6,

For the words "Assistant Lecturers" in column (2) against the item 5 "Lecturers in Arts and Medical Colleges" the words "Junior Lecturers" shall be substituted.

3) xxxxx

(By order and in the name of the Governor of Andhra Pradesh)

B.PRATAP REDDY

Secretary to Government"

G.O.Ms.No.37 :

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

A.P.E.S. – Class IV – Collegiate Education – Amendment to the Special Rules for A.P.E.S. – Issued.

EDUCATION (H.E.1) DEPARTMENT

G.O.Ms.No.37 Dated: 5-2-1994

Read the following :

1. G.O.Ms.No.259, G.A. (Rules) Dept., dt.9-2-1962.
2. G.O.Ms.No.1072, Edn.(W) Dept., dt.26-11-1976.
3. G.O.Ms.No.719, Edn.(W) Dept., dt.3-7-1978.
4. G.O.Ms.No.817, Edn.(C) Dept., dt.7-8-78.
5. G.O.Ms.No.423, Edn.(M1) Dept., dt.19-4-79.
6. G.O.Ms.No.1174, Edn.(W) Dept., dt.5-10-81.
7. From the D.H.E. Lr.Rc.No.4500/C3-3/94, dated 16-3-85 & 31-7-86.
8. Govt.Lr.No.937/H.E.1/82-48, Edn., Dt.23-4-90.
9. From the Dy.Secy. A.P.P.S.C. Lr.No.1065/RR/4/90, dt.6-6-90.
10. The A.P.A.T. Judgment Dt.2-7-93, in R.C.No.1705/87 and Batch.
11. From the C.C.E. Hyderabad Lr.Rc.Sno.5519/G.C 1-3/93, dated 7-10-93.

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ORDER:

The following notification will be published in the Andhra Pradesh Gazette :

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh, hereby makes the following amendment to the notification part issued in G.O.Ms.No.423, Education Department dated the 19th April, 1979 amending the Special Rules for the Andhra Pradesh Educational Service, issued in G.O.Ms.No.259, General Administration (Rules) Department, dated the 9th February, 1962.

AMENDMENT

To the said notification part, the following shall be added, namely:-

"The amendment hereby made shall be deemed to have come into force with effect on and from the 1st April 1976".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

P.V. RAO

PRINCIPAL SECRETARY TO GOVERNMENT"

G.O.Ms.No.28:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

APES – Reckoning the service rendered in the cadre of Junior Lecturers for Career Advancement Scheme – Orders – Issued.

Education (U.E.II) Department

G.O.Ms.No.28 Dated : 22.01.1999

Read the following :-

1. G.O.Ms.No.1072, Education (W) Department, dt.26.11.1976.
2. G.O.Ms.No.423, Education (M1) Department, dt.19.04.1979.
3. G.O.Ms.No.1174, Education (W) Department, dt.05.10.1981.
4. G.O.Ms.No.13, Education (W) Department, dt.06-01-1982.
5. G.O.Ms.No.354, Administration (Services.A) Department, dt.11.06.1990.
6. Representation from Government College Gazetted Teachers Association, Andhra Pradesh, dt.25.09.1992.
7. From Commissioner of Collegiate Education, Hyderabad Lr.Rc.No.1522/UGC-2/91, dt.14.06.1993.
8. From A.P.A.T., Hyderabad Judgment on R.P.1705/87 and other petitions, dt.02.07.1993.
9. G.O.Ms.No.37, Education (H.E1) Department, Dt.05.02.1994.
10. Govt.Memo No.1905/HE.1/93-2, dt.23.02.1994
11. Govt.Memo No.334/HE.1/94-1, dt.10.05.1994
12. Govt. Memo No.1401/IE.1/94-3, dt.10.04.1995.
13. G.O.Rt.No.1432, Education (UE.I) Department, dt.25-09-1997.

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ORDER:

In the reference sixth read above, the Government College Gazetted Teachers' Association, Andhra Pradesh have stated that the Lecturers drafted from Junior Lecturers Cadre through Recruitment by transfer in Government Colleges could not avail the benefit of redesignation on completion of 3 years of

service as in the case of private colleges. Promotions in terms of G.O.Ms.No.1072, Education (W1) Department, dt.26.11.1976 were delayed for 5 years i.e., till 01.01.1981, when the first Batch of promotees were appointed to the posts of Lecturers. The loss on account of this delay must be condoned even for the subsequent Batches correspondingly till 01.01.1986. The cadre of Junior Lecturer is a substitute to Assistant Lecturer in Andhra Pradesh Educational Subordinate Services as amended vide G.O.Ms.No.423, Education (M1) Department, dt.19.04.1979. The previous service of another feeder cadre i.e., Assistant Lecturer is counted for Career Advancement Scheme vide G.O.Ms.No.169, Education (UE.I) Department, dt.07.07.1990 while that of Junior Lecturer is not included for reckoning is a fact which needs keen attention.

2. Further, the association has mentioned that the benefit provided to Junior Lecturers as per G.O.Ms.No.1072, Education (W1) Department, dt.26.11.1976, namely upgrading of Junior Lecturers working in Degree Colleges as Lecturers after completion of 3 years of service in Degree Colleges, accrued to the Junior Lecturers working in Private Degree Colleges and that the Junior Lecturers working in Government Degree Colleges were deprived of that benefit. The loss of that benefit they said will have a cumulative effect on them if no weightage is given to the service rendered in the cadre of Junior Lecturer for the purpose of Career Advancement Scheme.

3. In this connection, the Association has suggested a formula i.e., reduction of 3 years of services from the total service rendered as Junior Lecturer prior to promotions or by giving retrospective promotion for the purpose of Career Advancement Scheme.

4. In the terms and conditions seventh read above, the C.C.E., Hyderabad has suggested that to consider the formula i.e., reduction of 3 years of services from the total service rendered as Junior Lecturer prior to promotions as proposed by the G.C.G.T.A. provided the Association agree to the condition i.e., surrendering all monetary benefits extended to them in the cadre of Junior Lecturer between 1976 and 1986.

5 . In the reference thirteenth read above, the Government have issued orders to count the notional service rendered by few Lecturers those who were upgraded from Junior Lecturers in Degree Colleges to that of Lecturers for the purpose of C.A.S.

6 . In the circumstances explained above and taking into consideration of all the aspects, Government after careful examination, hereby issue the following orders for reckoning the service rendered in the cadre of Junior Lecturer to the C.A.S. which is in conformity with the A.P.A.T. Judgment dated 02.07.1993 in O.A.No.1705/87.

1. A total of 228 posts of Junior Lecturers be upgraded as Lecturers in terms of G.O.Ms.No.1072, Education (W1) Department, dt.26.11.1976. All the 228 Junior Lecturers who were promoted as Lecturers in the year 1981 be given 01.04.1976 as the date of their promotion.

2. In the year 1981 a total of 590 Junior Lecturers were promoted. After taking out 228 as at Sl.No.1 above, there will be a balance of 362 for whom the date of promotion be given from 01.04.1977.

3. 223 Junior Lecturers were promoted in the year 1982. Half of this No. i.e., 112 be given their date of promotion as 01.04.1978.

7. Further, it is ordered that all the promotions mentioned above shall be notional in nature and monetary benefit shall accrue from the date of issue of orders and notional promotion period shall be counted for Career Advancement Scheme.

This order issues with the concurrence of Fin. & Plg. (F.W.PC.1) Dept, vide their U.O.No.49111/272/PC.1/98, dt.24.12.1998.

A.K. GOYAL

SECRETARY TO GOVERNMENT"

22. The Tribunal in the impugned order at para-19 had observed as hereunder :

"As regards the contention on behalf of the applicants that giving seniority to the Junior Lecturers appointed by transfer as Lecturers with effect from 1.4.76 is contrary to the Judgment of the Tribunal in O.A.No.325/99 & Batch, it is to be noted that in the above OAs, the Tribunal had considered the validity of G.O.Ms.No.37, Education, dated 5.2.94, wherein a provision was made under the rules for appointment by transfer to Junior Lecturers as Lecturers with effect from 1.4.76 and G.O.Ms.No.28, Education, dated 22-1-99 wherein the Government ordered that 228 posts of Junior Lecturers be upgraded as Lecturers in terms of G.O.Ms.No.1072, Education, dated 26.11.1976 and all the 228 Junior Lecturers who were promoted as Lecturers in the year 1981 be given 1.4.76 as the date of their promotion. The Tribunal as far as the above two G.Os. are concerned held that when the Government provided promotion channel from A.P. Educational Subordinate Services to A.P. Educational Services by recruitment by transfer, there is nothing wrong in issuing G.O.Ms.No.28, Education, dated 22.1.99 and by virtue of the Judgment of the Tribunal in R.P.No.1705.87 dated 2.7.93, the Government have no option except to provide the promotion channel. The Tribunal also observed that when other categories of teachers were merged into one

category of Lecturers by virtue of G.O.Ms.No.1072, Education, dated 26.11.1976, they have to necessarily give effect to such orders from 1.4.76. As G.O.Ms.No.28, dated 22.1.99 deals with subject relating to career advancement scheme and not seniority, the Tribunal held that Assistant Lecturers can have no grievance in regard to the above G.O. The view taken by the Tribunal in the earlier O.As. is that as two impugned G.Os. do not confer any benefit relating to seniority on the Junior Lecturers who were appointed by transfer as Lecturers, the Assistant Lecturers can have no grievance. Though the Tribunal took note of the Memo issued by the Commissioner of Collegiate Education in Rc.No.12/GC/II-5/97, dated 27.1.97 wherein it was clarified that Junior Lecturers promoted and posted by transfer as Lecturers with retrospective effect from 1.4.76 notionally pursuant to the Judgment of this Tribunal rendered in R.P.No.1705/87 & Batch dated 2.7.93 will not have any right to claim seniority over the then Assistant Lecturers/Tutors/Demonstrators who were working in Government College as on 31.3.76 and later re-designated as Lecturers in the time of scale of Rs.700-1600, the Tribunal did not record any finding that Junior Lecturers appointed by transfer as Lecturers are not eligible for seniority from 1.4.76. Though the applicants are relying on the above clarification issued by the Commissioner in his Rc.No.12/GC/II-5/97, dated 27.1.97, it is to be noted that subsequent to the above clarification, the Government which is a higher authority has issued the impugned seniority list in G.O.Ms.No.73, Education, dated 14.10.2003 giving seniority to the Junior Lecturers who were appointed by transfer as Lecturers with effect from 1.4.76. It is also to be noted that when the matter is subject matter of dispute before the Tribunal, it is to be examined whether there is anything irregular or illegal in the Junior Lecturers appointed by transfer as Lecturers being given seniority from 1.4.76, keeping in view the rules and background of the case and relying on the clarification issued by the Commissioner, the Tribunal cannot hold that Junior Lecturers appointed by transfer as Lecturers are not entitled for seniority with effect from 1.4.76. The Tribunal in O.A.No.325/99 & Batch did not give any specific finding regarding seniority to be given to the Junior Lecturers who were given notional date of appointment by transfer as Lecturers with effect from 1.4.76. The Tribunal only observed that G.O.Ms.No.37, Education, dated 5.2.94 and G.O.Ms.No.28, Education, dated 22.1.99 do not adversely affect the rights of any of the individuals. It is to be noted that no order giving seniority to Junior Lecturers who were appointed by transfer as Lecturers with effect from 1.4.76 was questioned in those O.As. and therefore, any observation of the Tribunal in those O.As. cannot be construed to have the effect of Junior Lecturers appointed as Lecturers with notional date of 1.4.76 not being eligible for seniority from that date. For the reasons stated above, it cannot be said that no Junior Lecturer who was given notional date of appointment as Lecturers with effect from 1.4.76 is entitled for seniority with effect from 1.4.76."

Submissions at length were made by the respective Counsel relating to the order made in O.A.No.325/99 & Batch which had attained finality. It is pertinent to note that the respective Counsel had explained several reasons, the commonness being that the same had not been questioned and the same had attained finality, the writ petitioners taking a stand that since the seniority was left unaffected the same had not been questioned and on the contrary inasmuch as conferment of certain benefits had been upheld the same principle may have to be extended, had been the stand taken by the unofficial respondents in these Writ Petitions–Junior Lecturers/promotees. In the backdrop of the rival submissions made in elaboration, it may be very relevant to have a look at the relevant portions of the order made in the Batch O.A.No.1507/99 and O.A.No.325/99 dated 9-2-2001 wherein the Tribunal had stated at paras 63 to 69 as hereunder :

"Also G.O.Ms.No.1072, Education, dated 26-11-1976 was issued, providing an option to the employees to be governed by A.P. Educational Services w.e.f. 1-4-1976 and a similar benefit was extended by issuing G.O.Ms.No.37, Education, dated 5-2-1994 giving retrospective effect w.e.f. 1-4-1976 for those who were promoted from the category of Junior Lecturers covered by A.P. Educational Subordinate Service Rules to that of Lecturers of A.P. Educational Services. Thus, this G.O.Ms.No.423, Education, dated 19-4-1979, provided a promotional channel to the Junior Lecturers working in Junior Colleges to the post of Lecturers in Degree Colleges by way of appointment by transfer. We are unable to appreciate the argument that there cannot be any appointment by transfer to a promotional post. When there was two different services governing two different posts and a promotional channel was proposed from one service to a different service, it is called appointment by transfer from one service to another service and thus, in G.O.Ms.No.423, Education, dated 19-4-1979 it was specially mentioned under the amendment that the following words shall be added :

"Recruitment by transfer from among Junior Lecturers in A.P. Educational Subordinate Services".

Thus, when the Government proposed to provide a promotional channel from A.P. Educational Subordinate Service to A.P. Educational Service by recruitment by transfer, we do not see anything wrong in the issue of G.O.Ms.No.28, Education, dated 22-1-1999. Also by virtue of the Judgment of the Tribunal in R.P.No.1705/87, dated 2-7-1993, Government have no option except to provide this promotional channel and when other categories of teachers were merged into one category 'Lecturer' by virtue of G.O.Ms.No.1072, Education, dated 26-11-1976, they have to necessarily give effect to such orders from

1-4-1976.

Government have specifically stated in G.O.Ms.No.281, Education, dated 28-3-1980 that 182 posts of Junior Lecturers existing in Degree Colleges upgraded as Lecturers in the Revised Pay Scales of 1976 w.e.f. 1-4-1976 and also subject to the conditions stipulated in G.O.Ms.No.1072, education, dated 26-11-1976. Thus, it can be seen that as early as in the year 1980 itself, Government found it necessary to give retrospective effect from 1-4-1976 to the category of Junior Lecturers when the posts were upgraded. Because of this only, Government have issued orders in G.O.Ms.No.28, Education, dated 22-1-1999, upgrading 228 posts of Junior Lecturers in terms of G.O.Ms.No.1072, Education, dated 26-11-1976 and therefore, 228 Junior Lecturers who were promoted as Lecturers in the year 1982 were given 1-4-1976 as the date of their promotion. Similarly, they ordered 362 posts to be given as their notional dates of promotion 1-4-1977 and 1-4-1978. This was done on the ground that the Junior Lecturers who were recruited by transfer and posted in Government Colleges could not avail this benefit of promotion in terms of G.O.Ms.No.1072, Education, dated 26-11-1976 as there was administrative delay till 11-1-1981 by which date only the first Batch of promotees were appointed to the post of Lecturers under G.O.Ms.No.1072, Education, dated 26-11-1976 was extended for the purpose of the benefit under career advancement scheme. It was mentioned in caption of the G.O. that this order of reckoning the services rendered in the cadre of Junior Lecturers is only for the purpose of career advancement scheme and that, in the last but one para, it was mentioned that the order of promotions mentioned in the G.O. shall be notional in nature and monetary benefit shall be given from the date of issue of this order and that, the notional promotion period shall be counted for the purpose of career advancement scheme. Had it been the intention of Government to provide for any other entitlement also in addition to the career advancement scheme, they would have explicitly mentioned it.

The Commissioner of Collegiate Education, in his Memo Rc.No.12/G.II/97 dated 27-1-1997 clarified that the Junior Lecturers promoted and posted by transfer as Lecturers with retrospective effect from 1-4-1976 notionally pursuant to the Judgment of this Tribunal rendered in R.P.No.1705/87 and Batch dated 2-7-1993, will not have any right to claim seniority over the then Assistant Lecturers/Tutors/Demonstrators who were working in Government Colleges as on 31-3-1976 and later redesignated Lecturers in time scale of Rs.700-1600.

Thus, it is clear that the teachers working in Degree Colleges covered by A.P. Educational Services Rules, who were already working prior to 1-4-1976 are in no way affected in respect of their seniority by virtue of G.O.Ms.No.37, Education, dated 5-2-1997 and G.O.Ms.No.28, Education, dated 22-1-1999, G.O.Rt.No.1432, Education, dated 25-9-1997 was issued in favour of one Sri S.D.Subba Reddy and two others and they were assigned notional dates of promotion by virtue of the impugned G.O. w.e.f. 1-4-1976, 1-4-1976 and 11-11-1976 respectively. It is seen from the caption of G.O.Rt.No.1432, Education, dated 25-9-1997 that it is only for appointment under career advancement scheme and in the last but one para it is mentioned that Government permitted the Commissioner of Collegiate Education for counting the notional service rendered by these Lecturers from the dates indicated against their names, and they were awarded senior scales respectively for the purpose of computation of services for appointment under career advancement scheme. Thus, it is clear that this G.O. was issued only for the purpose of career advancement scheme and it does not in any way confer any right of seniority in the cadre of Lecturers.

It is also observed that this Tribunal while disposing of the VMAs.16 and 17 of 1997, filed by Lecturers of Degree Colleges, observed as follows:-

“It is clear from the impugned G.O., that the promotions mentioned in G.O. shall be notional in nature and the monetary benefit shall accrue from the date of issue of orders and notional promotion period shall be counted for the career advancement scheme. The benefit conferred under this G.O. in our considered view, prima-facie does not in any manner alter the seniority of the beneficiaries vis-à-vis others. Further, at the instance of one individual viz., the applicant, the benefit conferred on several eligible Junior Lecturers under this impugned G.O. cannot be stopped admittedly, the applicant already got the benefit of career advancement scheme. In the circumstances, we do not see any valid reasons to suspend the operation of G.O.Ms.No.28, Education, dated 22-1-1999 at the instance of the applicant as we are of the considered view that the benefit conferred under this G.O. to the eligible candidates will not effect the rights of the applicants, if any, in any manner. Accordingly, the orders dated 28-1-1999 passed by this Tribunal directing the respondents to maintain status-quo as obtaining on that date regarding G.O.Ms.No.28, Education, dated 22-1-1999, were hereby vacated and VMAs were disposed of.”

We do not see any reason to interfere with the impugned G.Os. in view of our foregoing discussions made in above paragraphs. We are in complete agreement with the reasons advanced at the stage of vacation of interim orders while VMAs. 16 and 17 in O.A.No.325/99. This, coupled with the orders of the Commissioner issued in his Memo Rc.No.12/G.II/97, dated 27-1-1997, makes it abundantly clear that the benefits extended to the category of Junior Lecturers by the Government by way of issuance of G.O.Ms.No.37, Education, dated 5-2-1994 and G.O.Ms.No.28, Education, dated 22-1-1999, do not adversely affect the rights of any of the individuals and hence the G.Os. are sustained. Accordingly, O.As.1507/2K, 325/99, 6299/97, 7824/97, 1449/94 and O.A.No.6342/97 are disposed of. All the M.As. stand disposed of in view of the disposal of the main O.As. No costs.”

The Counsel for the unofficial respondents specifically pointed out to the portions of the counter affidavit in O.A.No.1507/99 whereunder it was stated :

“Further, it is submitted that Government have issued orders in G.O.Ms.No.1076, Edn. dated 17.11.77 to

the effect that the Junior Lecturers working in Government Junior Colleges against the posts of Assistant Lecturers will continue to draw their own scale of pay as long as they continue in the said posts. An extension of UGC scale of pay to Junior Lecturers did not find place in the UGC Scheme. The UGC refused to grant Financial Assistance and the Govt. in their D.O. Lr.No.3303-C.2/77-3, Dt.5.5.79 ordered that the RPS 1976 should not be implemented in respect of Junior Lecturers working in composite degree college until further orders. Aggrieved by these orders a few Junior Lecturers working in Degree Colleges filed W.Ps. in High Court. The High Court in the Judgment dated 10-8-79 delivered by Hon'ble Justice Sri A.Gangadhara Rao allowed the Batch of W.Ps. and directed the Government to implement the orders issued in G.O.Ms.No.1072, Edn., Dt.26-11-76 as amended in G.O.Ms.No.719, Edn., Dt.3-7-70 in respect of the petitioners who are Junior Lecturers working in Government Degree Colleges. Keeping in view of the Judgment of High Court, Government in their orders M.S.No.1174, Edn. dt.5.10.81 issued orders to the effect that the orders issued in G.O.Ms.No.1072, Edn., dt.26.11.76 read with Govt.Order Ms.No.719 Edn. dt.3-7-70 and G.O.Ms.No.1076 Edn., dt.17.11.77 be implemented to all the Junior Lecturers (both Govt. and Private) working in Degree Colleges subject to the conditions laid down in the above Government orders. Consequently, the orders issued in Govt.D.O.Lr.No.3303/C.2/77, dt.5-1-78 and G.O.Ms.No.79, Edn. dt.23.1.81 are with drawn and the orders issued in G.O.Ms.No.281, Edn. dt.28-3-80 are modified to the extent necessary."

It was also further stated that in the counter affidavit :

"As per the orders of the Supreme Court, the Junior Lecturers working in Government Degree Colleges and drawing U.G.C. scales of Rs.700-1600 in pursuance of the Judgment of A.P.A.T. in R.P.No.1772/81 were transferred to Government Junior Colleges with their existing scale of pay. Further the S.L.P. filed by the Government against the Judgment in R.P.No.1772/81 and Batch was dismissed by the Supreme Court.

Subsequently, certain Junior Lecturers have filed R.P.No.1705/87 in A.P.A.T. Hyderabad with a request to direct the respondents to treat their service as Junior Lecturers in Degree Colleges as continuous and declare them entitled to the scale of Rs.700-1600 from the date on which they complete 3 years of service as Junior Lecturer in Government Degree Colleges. The A.P.A.T. in its Judgment dt.2.7.93 in R.P.No.1705/87 and Batch observed that the Junior Lecturers working in Government Degree Colleges are not entitled for declaration or direction to grant them U.G.C. pay scales as a matter of right simply because they happened to work in Government Degree Colleges without completing complying with the requirements laid down in law and the instructions issued in G.O.Ms.No.1072, Edn., dt.26.11.76 or irrespective of their seniority in the category of Junior Lecturers and without being processed by the D.P.C. The A.P.A.T. has therefore directed to conduct the exercise contemplated in G.O.Ms.No.1072, Edn. dt.26.11.76 and the subsequent instructions on the subject within a period of 6 months by the date of receipt of the copy of the Judgment."

Rc.No.1377, dated 4-6-1979, the proceedings of the Director of Higher Education, Andhra Pradesh, Hyderabad also had been pointed out wherein clarification No.5 sought by the Director of Higher Education reads:

"Whether the Assistant Lecturers, Tutors and Demonstrators whose pay has been fixed in the revised pay scales of Rs.700-1600 is to be designated as Lecturer or not" and it was stated :

"The proposal of the director of Higher Education to authorize him to redesignate the posts both permanent and temporary to the extent of the eligible candidates who are working as or were posted in the posts of Assistant Lecturers, Tutors and Demonstrators, etc., and whose pay has been fixed in the Revised Scales of Pay of Rs.700 – 1600 is agreed to, subject to ratification by Government."

Certain submissions no doubt were made that in the light of what had been stated relating to Assistant Lecturers, Tutors and Demonstrators etc., i.e., "…. subject to ratification by Government …..". In the absence of a plea or any material being placed before the Court relating to the same, it may have to be taken that there are no valid appointments and such persons have no locus standi at all to question the final seniority list.

23. G.O.Ms.No.848, dated 19-10-1982 to which reference had been made by the Counsel for the unofficial respondents reads as hereunder :

GOVERNMENT OF ANDHR PRADESH

ABSTRACT

Andhra Pradesh Educational Subordinate Service – Posts of Assistant Lecturers/Tutors/Demonstrators in Government Colleges – Conversion into Lecturers of Andhra Pradesh Educational Service consequent on the implementation of Revised Pay Scales of 1976 of Rs.700-1600 and treating the incumbents as Gazetted – Orders – Issued.

EDUCATION (M) DEPARTMENT

G.O.Ms.No.848, Edn. Dated : 10-10-1982

Read the following :

1. G.O.Ms.No.1072, Edn., dt.26-11-1976.
2. G.O.Ms.No.719, Edn., dt.3-7-1978.
3. Govt.Memo No.838-W2/79-1, dt.24-4-1979.
4. G.O.Ms.No.817, Edn., dt.7-8-1978.
5. From the Director of Higher Education letter Rc.No.23-UGC Cell-2/82 dt.8-4-1932.
6. From the Secretary, A.P. Public Service Commission, Lr.No.2606-B1/4/82 dt.5-8-1982.

ORDER:

The following notification will be published in the Andhra Pradesh Gazette :-

NOTIFICATION

All the posts of Tutors/Demonstrators/Assistant Lecturers existing as on 31-3-1976 in Government Colleges are upgraded as Lecturers in Andhra Pradesh Educational Service from 1-4-1976 and the teachers working against these posts and who were allowed the scale of Rs.700-1600 shall be treated as Gazetted with effect from their entry into the scale of Rs.700-1600.

2. The Director of Higher Education is requested to send necessary draft amendments for amending Andhra Pradesh Educational Subordinate Service and Andhra Pradesh Educational Service Rules, urgently.

(By order and in the name of the Governor of Andhra Pradesh)

K.S.R. MURTHY

Secretary to Government

Reliance also was placed on para-3 of G.O.Ms.No.281, Educatin (W) Department, dated 28-3-1980, which reads as hereunder :

"The Government, after careful consideration, direct that the existing posts of 182 Junior Lecturers in Degree Colleges be upgraded as Lecturers in the Revised Scale of Pay of 700-1600 with effect from 1-4-1976 (i.e., the date of implementation of the Revised Pay Scales of 1976 ordered in G.O. first read above), subject to the condition that they should possess the qualification prescribed for the post by the Universities concerned prior to 1-4-1976 and also subject to the conditions prescribed in the G.O. first read above".

24. In W.P.No.4813/78 & Batch, the petitioners prayed for a writ of mandamus or direction to respondents to implement the orders of the State Government contained in G.O.Ms.No.1072, Education Department dated 26th November, 1976 relating to revision of pay scales in respect of Junior Lecturers working in Degree Colleges

under private managements, and it was no doubt observed :

> "Having regard to all these decisions, I hold that the petitioners, who are Junior Lecturers working in Degree Colleges are entitled to the benefit of G.O.Ms.No.1072, Education Department, dated 26-11-1976 and the action of the respondents in not implementing the same amounts to violation of Article 14 of the Constitution of India."

The Writ Petitions were no doubt allowed and the respondents were directed to implement G.O.Ms.No.1072, Education Department, dated 26-11-1976 as amended by G.O.Ms.No.719, Education Department, dated 3-7-1978 in respect of the petitioners who were Junior Lecturers working in Degree Colleges.

25. G.O.Ms.No.1174, dated 5-10-1981 and also G.O.Ms.No.13, dated 6-1-1982 also had been pointed out which read as hereunder :

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

COLLEGES – Affiliated Degree and Post Graduate Colleges (Government and Private) Andhra Pradesh Revised Pay Scales, 1976 – Allowing the Scale of pay to Junior Lecturers working in Degree Colleges – Orders – Issued.

EDUCATION (W) DEPARTMENT

G.O.Ms.No.1174 Dated : 5th October, 1981

1. G.O.Ms.No.1072, Education, dated 26-11-1976
2. G.O.Ms.No.1076, Education, dated 17-11-1977
3. Govt.D.O. Lr.No.3303-C2/77-3, Education, dt.5-1-1978.
4. G.O.Ms.No.719, Education, dt.3-7-1978
5. High Court Judgments dated 10-8-79 and 21-8-79.
6. G.O.Ms.No.281, Education, dt.28-3-1980.
7. G.O.Ms.No.79, Education, dt.28-1-1981.
8. High Court Judgment dt.22-1-1981.

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ORDER:

Orders were issued in G.O. first read above, implementing the Revised Pay Scales, 1976 (known as University Grants Commission scale to the teachers working in Degree and Post-Graduate Colleges (Govt. and Private) including Junior Lecturers working in Degree Colleges subject to the conditions prescribed in Col.(6) of Annexure of the said G.O. and also other conditions.

Subsequently in Government D.O. Lr. third read above, orders were issued not to implement Revised Pay Scales, 1976 in respect of Junior Lecturers working in Degree Colleges until further orders. The matter was further examined in consultation with Government of India. They have expressed their inability to extend financial assistance as they are outside the purview of University Grants Commission and are not eligible for University Grants Commission Scale.

Aggrieved by these orders, some of the Junior Lecturers in Degree Colleges filed W.Ps. in High Court. The High Court in its Judgment dated 10-8-1979 delivered by Honourable Justice Amareswari and Judgment dated 21-8-1979 delivered by Honourable Justice A.Gangadhara Rao, allowed the Batch of W.Ps. and directed the Government to implement the orders in G.O.Ms.No.1072, Education, dated 26-11-1976 as amended by G.O.Ms.No.719, Education, dated 3-7-1978 in respect of the petitioners who are Junior Lecturers working in Degree Colleges. Upon this, the Government filed W.As. in the High Court before the Division Bench stating that the Junior Lecturers are not eligible for University Grants Commission as they are outside the purview of the University Grants Commission and are not eligible for

any assistance from the Government of India.

Meanwhile orders were issued by the Government in G.O. sixth read above in consultation with Government of India for the upgradation of 182, Junior Lecturers posts in the scale of pay of Rs.700-1600 with effect from 1-4-1976. Further orders were also issued in G.O. seventh read above, accepting in principle that the posts of Junior Lecturers in Degree Colleges should be upgraded into Lecturers posts and allowed the Revised Pay Scale of Rs.700-1600 etc. The details regarding number of posts to be upgraded, the mode of filling up of the posts to be upgraded and the mode of fixation in 3 Man Committee scale of Rs.700-1600 is separately under consideration.

While the matter stood at this stage, the W.As. filed by Government came up for hearing on 22-1-1981 before the Full Bench and they were dismissed.

Keeping in view, the Judgments of High Court on the subject the matter was further considered by Government carefully in detail and it was decided that the orders issued in G.O.Ms.No.1072, Education, dated 26-11-1976 read with G.O.Ms.No.719, Education, dated 3-7-1978 and G.O.Ms.No.1075 Education, dated 17-11-1977 be implemented to all the Junior Lecturers (Both Government and Private) working in Degree Colleges subject to the conditions laid down in the said G.Os. Consequently the orders issued in Govt. D.O. Lr.No.3303-C-2/77, Education, dated 5-1-1978 and G.O.Ms.No.79, Education, dated 28-1-1981 are hereby withdrawn and the orders issued in G.O.Ms.No.281, Education, dated 28-3-1980 are modified to the extent necessary.

This order issues with the concurrence of Finance and Planning (EE) Department vide their U.O.No.2073/DFS/M/81, dt.1-10-1981.

(BY ORDER AND IN The NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M.GOPALAKRISHNAN

Secretary to Government

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G.O.Ms.No.13:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Colleges – Affiliated Degree and Post-Graduate Colleges (Government and Private) – Andhra Pradesh Revised Pay Scales 1976 – Allowing the scale of pay to Junior Lecturers working in Degree Colleges – Amendment to G.O.Ms.No.1174, Education, dt.5-10-1981 – Issued.

EDUCATION (W) DEPARTMENT

G.O.Ms.No.13, Education, Dated: 6th January, 1982

Read the following :

1. G.O.Ms.No.1174, Education, dated 5-10-1981
2. From the Director of Higher Education, Lr.RC.No.29/UGC-Cell-2/81, dated 16-10-1981.
3. Govt.D.O.Lr.No.2121-W2/81-1, Education, dt.23-10-81.
4. From the Director of Higher Education, Lr.RC.No.29/UGC-Cell-2/81, dated 9-11-1981.

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ORDER:

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In modification of the orders issued in G.O. first read above para 6 of the said G.O. be substituted by the following para :-

Keeping in view, the Judgments of High Court on the subject, the matter was further considered by Government carefully in detail and it was decided that the orders issued in G.O.Ms.No.1072, Education,

dated 26-11-1976 read with G.O.Ms.No.719, Education, dated 3-7-1978 and G.O.Ms.No.1076, Education, dated 17-11-1977 be implemented in respect of Junior Lecturers posts existing as on 26-11-1976 in Degree Colleges (both Government and Private) subject to the conditions laid down in the said G.Os. consequently the orders issued in Government D.O.Lr.No.3303/C277, Education, dated 5-1-1978 and G.O.Ms.No.79, Education, dated 28-1-1981 are hereby withdrawn and the orders issued in G.O.Ms.No.281, Education, dated 28-3-1980 are modified to the extent necessary.

2. This order issues with the concurrence of Finance and Planning (PRC) Department, vide their U.O.No.14/JES(P)/82, dated 5-1-1982.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

D.M.De Rebello

Special Secretary to Government

In the proceedings of the Director of Higher Education, Rc.29/UGC.Cell-2/81, dated 19-9-1984 wherein the Government in Memorandum No.194/W2/82-11, Education, dated 18-8-1983, stated :

"After careful consideration of the matter, the Government direct that the period of service of 5 years required to be put in by the Junior Lecturers in Degree Colleges to get the scale of Rs.700-1600 be reduced to three years in respect of Junior Lecturers working in Private Degree Colleges and also in Government Degree Colleges (pending issue of further amendments to Andhra Pradesh Educational Service Rules) whose posts were upgraded to that of Lecturers in G.Os. 3rd and 4th read above. The benefit of the revised scale of Rs.700-1600 in the Revised pay scale 1976 will be notional from 1-4-1976 or from the date of option to Revised Pay Scales, 1976, as the case may be with monetary benefit from the date of issue of these orders".

The Government in Memo No.1028/UE-3/84-4, dated 11-7-1985, at paras 3 and 4 stated :

"The matter has been examined by Government and it has been decided that the monetary benefit can be allowed in the above cases from 1-4-1976 or from the date of option to Revised Pay Scales of 1976 and to credit the arrears on this account upto 18-8-1983 to Provident Fund account of the subscribers. If there is no provident fund account in operation a provident fund account shall be opened and the arrears shall be paid into the said Account.

Accordingly in partial modification of the Memo 12th cited, Government hereby order that the monetary benefit of the scale of Rs.700-1600 be allowed to the Junior Lecturers working in degree colleges both Government and Private and who have been promoted as Lecturers on completion of 3 years of service as Junior Lecturers with effect from 1-4-1976 or from the date of option to Revised Pay Scales of 1976 whichever is later. Government also order that the arrears due on this account upto 18-8-1983 be credited to the Provident Fund Account of the employees concerned. In case any employee does not have a Provident Fund Account at present, a Provident Fund Account should be opened and the arrears credited to that account. The monetary benefit shall however be admissible in cash from 18-8-1983".

G.O.Rt.No.1432, dated 25-9-1997 in relation to D.Subba Reddy and certain others had specified :

"In view of the above circumstance and taking into consideration of all the aspects, Government after careful examination hereby permit the Commissioner of Collegiate Education for counting of the notional service rendered by the following Lecturers from the dates indicated against their names on which they were awarded senior scale retrospective for the purpose of computation service for appointment under Career Advancement Scheme.

1. Sri S.D. Subba Reddy, Lecturer in English – 1-4-1976
2. Dr.Syed Abdul Quader Hussaini, Lec. in Arabic – 1-4-1976
3. Sri V.Ramakrishna Sastry, Lecturer in History (Retd.) – 11-11-1976.

This order issues in the concurrence of Finance and Planning (FW.PO.1) Department vide U.O.No.37618/464/PC.1/96, dt.17-10-1996."

The proceedings Rc.No.1655/Ser.II-3/2000, dated 20-3-2003 reads :

PROCEEDINGS OF THE DIRECTOR OF COLLEGIATE EDUCATION

ANDHRA PRADESH : HYDERABAD

Present : Sri K.Ambarish, I.A.S.,

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Rc.No.1655/Ser.II-3/2000 Dated 20-3-2003

Sub: APES – Integrated Provisional Seniority list of Lecturers working in Government Degree Colleges with the common date of Notional Promotion/Redesignation w.e.f. 1-4-1976 – Communicated – Reg.

Ref:- 1) G.O.Ms.No.1072, Education, dt.26-11-1976.

2) G.O.Ms.No.423, Education, dt.19-4-1979.

3) Govt.Memo No.1905/HE.I-2/93, dt.23-2-1994.

4) Govt.Memo No.3557/CE.I-1/2001-1, Higher Education Department, dated 16-9-2002.

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Government in their Memo 4th read above, have issued orders to prepare inter-se seniority list of various categories of the college teachers as per Rule 33 and 36 of A.P. State and Subordinate Services Rules and communicate the same to the individuals for obtaining their objections, if any.

Government in their orders Ms.No.1072, Education Department, dt.26-11-1976 have extended UGC pay scales of 1976 to the college teachers w.e.f. 1-4-1976. As per para 5(i) of the G.O. different categories existing among the teachers in Degree Colleges like Readers, Heads of the Department/Senior Lecturers, Lecturers (Senior Scale), Lecturers (Junior Scale)/Assistant Lecturers and Junior Lecturers working in Degree Colleges were merged into one category i.e., lecturer in the scale of Rs.700-1600 w.e.f. 1-4-1976.

In pursuance of the above Government Orders, the Assistant Lecturers who have completed 3 years of service in the cadre, were designated as Lecturers in the scale of Rs.700-1600 w.e.f. 1-4-76.

The Tutors and Demonstrators who acquired 1st or 2nd class P.G. Degree with not less than 50% of the marks on completion of 5 years of service were designated as Lecturers in the scale of Rs.700-1600 w.e.f. 1-4-76.

In terms of G.O.Ms.No.1072, Education Department, dated 26-11-1976, 228 posts of Junior Lecturers were upgraded as Lecturers. In pursuance of A.P.A.T. Judgment dt.2-7-1993 in O.A.No.1705/87, 228 Junior Lecturers who were promoted as Lecturers in the year 1981 were given retrospective promotion as Lecturers w.e.f. 1-4-76 on notional basis.

The above three (3) categories of teachers were designated/promoted Notionally as Lecturers w.e.f. 1-4-76. In terms of Rule 36 of A.P. State and Sub-ordinate Services Rules, in case the date of probation is the same, whoever is aged, shall be the senior. Further as per Rule 33(c) of A.P. State and Subordinate Service Rules, whenever notional date of promotion is assigned, such date of notional promotion shall be taken into consideration for computing the qualifying length of service in the feeder category for promotion to the next higher category and that the notional service shall be counted for the purpose of declaration of probation also in the feeder category.

In pursuance of the above rule position, integrated provisional seniority list of the Assistant Lecturers designated as Lecturers w.e.f. 1-4-76. Tutors and Demonstrators absorbed as Lecturers w.e.f. 1-4-76 and the Junior Lecturers promoted as Lecturers retrospectively from 1-4-76 and are in service as on 1-2-2003, is communicated herewith to the Lecturers concerned.

THEY ARE REQUESTED TO SUBMIT THEIR OBJECTIONS IF ANY, WITHIN A PERIOD OF 15 DAYS FROM THE DATE OF RECEIPT OF THESE PROCEEDINGS FOR CONSIDERATION. The objections if any, received after the stipulated period will not be entertained and their seniority will be finalized based on the available records. They are also informed that if any name(s) of Lecturers are missing in this provisional seniority list or if any corrections are to be made in the dates mentioned in the list, the same may be brought to the notice of the DIRECTOR OF COLLEGIATE EDUCATION for taking further necessary action in the matter.

The Principals of all Government Degree Colleges concerned are requested to communicate the provisional seniority list to the individuals concerned and obtain acknowledgement from them in token of having received the seniority list and preserve the same in their office records.

The receipt of these proceedings should be acknowledged by return of post.

Sd/- K.AMBADISH

DIRECTOR OF COLLEGIATE EDUCATION

On the strength of the aforesaid Memos and also G.Os. referred to supra and the order made by the Tribunal in O.A.No.325/99 & Batch, elaborate submissions were advanced by all the Counsel on record.

26. There cannot be any doubt or controversy that applying the principle of comity, the orders of the Courts are to be in conformity and not to be conflicting. On a careful scrutiny of the Common Judgment in O.A.No.325/99 & Batch, dated 9-2-2001, specific observation was made to the effect that the seniority of the writ petitioners and similarly placed Lecturers would be unaffected. No doubt, evidently that was the reason why the writ petitioners had allowed the same to attain finality inasmuch as the question of seniority was left untouched and only directions in relation to certain benefits had been conferred. Much reliance was placed on certain findings and the observations made in R.P.No.1705/87 & Batch made by the Tribunal dated 2-7-1993 by the Counsel representing the writ petitioners. Paras 4, 7, 9, 12, 14, 16, 17 and 18 had been specifically referred to in this regard. At para-4, in R.P.No.1705/87 & Batch, it was stated :

> "The point for consideration is whether the petitioners are entitled for a declaration that their pay should be fixed in the U.G.C. pay scale of Rs.700-1600 introduced in G.O.Ms.No.1072, dated 26-11-1976 and the subsequent orders issued by the Government on the subject with effect from the date on which they have completed 3 years service in the category of Junior Lecturers ?"

The relevant portion of the para-7 in R.P.No.1705/87 & Batch is as hereunder :

> "Prior to the academic year 1969-70 the Degree Colleges were having one year duration of the pre-University and Degree Course of 3 years duration. The teaching staff pattern in the Degree Colleges was as follows :
>
> Lecturers … Rs.400 – 800
>
> Asst. Lecturers … Rs.300 – 600
>
> Tutors/Demonstrators … Rs.250 – 400
>
> The above teaching staff are governed by the A.P. Educational Service Rules. The Rules provide for promotion from the category of Tutors/Demonstrators to that of Asst. Lecturers and from the category of Assistant Lecturers to that of Lecturers. In that scheme there was no post of Junior Lecturer. Therefore, the nomenclature of post of Junior Lecturer was not figuring in the A.P. Educational Service Rules. From the academic year 1969-70 two years Intermediate course under the purview of Board of Intermediate Education was introduced in the place of pre-University Course in the Degree Colleges. There were also classes 11 and 12 in the Higher Secondary Schools and Multipurpose Schools and with the introduction of the Intermediate courses, the 11^{th} and 12^{th} classes were dispensed with in the said school sand Intermediate Course was introduced. So far as the introduction of the Intermediate Courses in the High Schools and Multi-purpose schools are concerned, the Board of Intermediate identified and designated those institutions as Junior Colleges. The Scale of Pay sanctioned to the posts Junior Lecturer thus created for the first time was Rs.200-500 and such of the Teachers who were earlier working in the secondary schools and Multi-purpose Schools teaching 11^{th} and 12^{th} classes and possessing Post graduate qualification were given a higher start of Rs.200 and such teachers wee designated as Junior Lecturers. As there were no rules by then to regulate the service conditions of Junior Lecturers, the Government issued adhoc rules in G.O.Ms.No.939, dated 19-9-1973 to regulate the appointment and other conditions of Junior Lecturers and the rules clearly say that the Junior Lecturers in Government Degree Colleges and Junior Lecturers in Junior Colleges shall constitute a separate class in the A.P. Education Subordinate Service. It is, therefore, evident that whether a Junior Lecturer was appointed in Junior College or Degree College they constitute a separate class in the A.P. Educational Subordinate Service and these Junior Lecturers are not at all governed with the A.P. Educational Service Rules. It is, therefore, evident that the Lecturers, Asst. Lecturers working in the Degree Colleges were governed by one set of service rules known as A.P. Educational Service Rules with distinct and separate pay scales and the Junior Lecturers working in Degree Colleges and Junior Colleges with separate nomenclature with a lesser scale of pay and they are governed by the adhoc rules issued for the first time in the year 1973 specifying that these Junior Lecturers constitute a separate class in the A.P. Educational Subordinate Service…..".

The relevant portion of para-9 in R.P.No.1705/87 & Batch is as hereunder :

"After the introduction of the scheme of Intermediate Education and the creation of the category of Junior Lecturers, the pay scales were revised with effect from 1.1.1974 and the following pay scales were given for the teaching staff :

Lecturers … 700-1200

Asst. Lecturers … 530-1050

Junior Lecturers … 430-800

Tutors/Demonstrators … 430-800

It can be seen from the Government memo dated 22.11.1978 that on the report of the Director of Higher Education, the Government permitted the Director to fill up the vacant posts of Asst.Lecturers/Lecturers existing in the Government colleges by posting Junior Lecturers purely on adhoc and temporary basis. By virtue of the aforesaid exemption granted by the Government, some of the Junior Lecturers were posted in the vacant posts in Degree colleges and while so posting, seniority in the category of Junior Lecturers was not taken into account as per averment made in para-7 of the counter. It is, therefore, urged by the learned G.P. that such of the Junior Lecturers who happened to be working in Degree Colleges by virtue of posting to the Degree Colleges irrespective of the seniority in the category of Junior Lecturers, they are not entitled for the revised pay scales 1976 applicable to the Lecturers and if that is done, the seniors in the category of Junior Lecturers working at the relevant point of time in Junior Colleges would suffer. This aspect is clearly stated in para-7 of the counter which is extracted below for convenient reference :

"As there was no recruitment for the posts of Lecturers in Government Degree Colleges, with a view to see that instructions in the Colleges does not suffer, Government in their Memo No.3308/B2/78-2, Edn. (B) Department dated 22-11-1978 (Annexure No.X at page No.58-59) have permitted the Director (Respondent No.2) to fill up the vacant posts of Lecturers, Assistant Lecturers/Tutors/Demonstrators existing in the Government Colleges by posting, Junior Lecturers in their own scale of pay purely on adhoc and temporary basis (stop gap arrangement) and without prejudice to their status as Junior Lecturers. As per the above orders of the Government the Junior Lecturers were posted in the post of Lecturers/Asst. Lecturers in Government Degree College in their own scale of pay to avoid dislocation of teaching work in Degree Colleges. While doing so the seniority or juniority of the Junior Lecturers was not taken into consideration and who ever was readily available has been transferred and posted to Government Degree Colleges. In Government sector each college is not a unit for appointment but the zone is the unit, of appointment. In private sector each college is a separate unit for appointment. As already mentioned in the foregoing paras, the Junior Lecturers working in Government Degree Colleges and in the Government Junior Colleges constitute single class in A.P.E.S.S. There is no distinction between the Junior Lecturers working in Government Junior College and in Government Junior College and in Government Degree Colleges. Since the Junior Lecturers have been posted to Government Degree Colleges against the posts of Asst. Lecturers in their own scales of pay without taking into consideration their seniority in the zone and subject. The above G.O.Ms.No.1072, Edn. dt.26-11-1976 (Annexure No.VI at page No.34-51) could not be implemented in respect of all the Junior Lecturers posted in Govt. Degree Colleges, as the seniors happen to be working in Govt. Junior Colleges in the State D.A. merged scale of pay and juniors are working in Govt. Degree Colleges. It will be discriminatory if the petitioners alone are allowed the U.G.C. scale of 1976 in reference to their seniors working in Govt. Junior Colleges".

In paras-12 and 14 it had been pointed out :

"It is evident from the above that the Government have been implementing their orders issued in G.O.Ms.No.1072 and in that process several Junior Lecturers were promoted as Lecturers and given the Revised Pay Scales of 1976. Such an exercise is essential in view of the rule position, particularly the Junior Lecturers in Degree Colleges as well as in Junior Colleges form part of one class in the Educational Subordinate Service and posts of Lecturers form part of A.P. Educational Service and the posts have to be filled up in accordance with the service rules and also in accordance with the provisions contained in the Presidential Order. If a Junior Lecturer who is governed by the A.P. Educational Subordinate Service Rules or the adhoc rules happens to be working in a Degree College irrespective of his seniority in the category of Junior Lecturers, he cannot claim as a matter of right that he is entitled to claim UGC scale simply because he is working in a Degree College at a relevant point of time. If the posts of Junior Lecturers in the Degree Colleges are separate entity and governed by separate service rules than the posts of Junior Lecturers in Junior Colleges, the contention of the petitioners is tenable. Here the Junior Lecturers, whether working in a Degree College or Junior College constitute one class and they are governed by separate set of rules. If a Junior Lecturer governed by the Educational Subordinate Service Rules or the adhoc rules is posted to Degree College, by virtue of his seniority, merit and ability, then the position will be different. According to the counter the position is otherwise. If a senior in the category of Junior Lecturer who is qualified to be appointed as Lecturer happens to be posted in a Degree College as per the administrative exigencies, such a junior cannot claim that he is entitled to get UGC Pay Scales simply because he is working in a Degree College. These aspects were taken note of in the earlier Judgment of the Tribunal also and it is for that reason the Tribunal held in the operative portion of the

Judgment that till such time, the cases of the petitioners in those cases were placed before the D.P.C. as required in item 4(d) of Annexure-I of G.O.1072 their pay shall not be disturbed. That Judgment did not give any right to the Junior Lecturers working in Junior Colleges to continue only in Degree Colleges or to get the U.G.C. scale of pay of Rs.700-1600 without reference to the various aspects including qualification and other requirements as per G.O.Ms.No.1072.

…….

……

As already noticed that on the report of the Director of Higher Education, to man the vacant posts of Assistant Lecturers and Lecturers in the Government Degree Colleges, the Government accorded permission to post the Junior Lecturers in the vacant posts. Regarding the pay and allowances that could be paid to such Junior Lecturers the Government ordered in G.O.Ms.No.1076, dated 17-11-1977 issued orders by adding the following proviso under item 4 of Annexure-I to G.O.Ms.No.1072, dated 26-11-1976.

"Provided that the Junior Lecturers working in Govt. Degree Colleges agreement post of Asst.Lecturers shall continue to draw their own scales of pay as long as they continue in the said posts."

The stand taken by the Government in the counter and also during the course of arguments is to the effect that in order to avoid dislocation of the instructional work in the Degree Colleges, as many of the posts of Asst. Lecturers and Lecturers were vacant, the Junior Lecturers were allowed to be posted against the vacant posts of Asst. Lecturers/Lecturers in the Degree Colleges with clear instructions that such Junior Lecturers be continue to draw the pay attached to Junior Lecturer posts and not the pay attached to the post of Assistant Lecturer/Lecturer against which they were posted."

The relevant portion at para-16 is as hereunder :

"….. The same is evident as to what was stated at page 11 of the counter in the present Batch of cases as follows :

"The petitioners who happened to work in Degree colleges are not senior most persons among the Junior Lecturers, in their respective subjects in that zone. For promotion to the post of Lecturers in Degree Colleges the Departmental Promotion Committee has to consider the claims of the Senior most Junior Lecturers working in that zone either in Degree or Junior Colleges in their respective subjects. The claims of the Junior Lecturers working in Degree Colleges alone cannot be considered by the Departmental Promotion Committee, for the promotions to the post of Lecturers, leaving their seniors working in Government Junior Colleges when the entire category of Junior Lecturers in that subject in that zone constitute a single unit. This fact was not earlier brought to the notice of the Hon'ble Andhra Pradesh Administrative Tribunal."

The Government issued orders from time to time particularly the orders issued in G.O.Ms.No.1174, dated 5-10-1981 and G.O. 13 dated 6-1-1982 to the effect that the posts of Lecturers in Degree Colleges including the posts of Asst. Lecturers/Junior Lecturers upgraded as Lecturers posts in each zone with reference to the inter-se seniority of Junior Lecturers as a whole, in conformity with the Presidential Order. As the postings of Junior Lecturers in Degree Colleges were given in a routine manner as the authority used to transfer Junior Lecturers from Junior Colleges to Degree colleges and vice-versa, at a particular point of time there happened to be a junior in the category of Junior Lecturers happen to work in Degree colleges whereas a senior in the service in the same category happens to work in Junior College. If the cut of date of 1-4-1976 prescribed in G.O.Ms.No.1072, dated 26-11-1976 was taken into account for implementing the UGC scales of pay and giving the UGC scales only to those Junior Lecturers working in Degree Colleges on that day or who happen to work in the Degree Colleges subsequent to that date, irrespective of the seniority in the category of Junior Lecturers, a junior in the category of Junior Lecturers has to be given the UGC scales and whereas a senior in the category of Junior Lecturer working in Junior College has to continue in the lower scale of pay. Such a situation is contrary to the rules and the Presidential Order. The Junior Lecturers working either in the Government Junior Colleges or Government Degree Colleges constitute a single class and governed by the adhoc service rules issued in G.O.Ms.No.939 whereas the teaching posts in Degree Colleges are governed by the A.P. Educational Service Rules……".

Further, at paras-17 and 18 it had been concluded by the Tribunal in the aforesaid Batch as hereunder :

"In view of the provisions contained in the Presidential Order and the Service Rules governing the recruitment/appointment, promotion, etc., of the Junior Lecturers/Assistant Lecturers, the exercise has to be completed as per the provisions contained in G.O. 1072. This is essential as the Junior Lecturers working in Government Colleges either Degree Colleges or Junior Colleges are separate class by themselves governed by separate set of rules and they constitute one class. As per the administrative

exigencies some of the Junior Lecturers were transferred from Junior college to Degree college and vice-versa. While transferring Junior Lecturers from one college to another college seniority was not followed. Though generally the senior among the Junior Lecturers were posted in the Degree Colleges but that was not uniformly followed and there were occasions where some of the juniors in the category of Junior Lecturers were posted to Degree College while a senior in that category continues to work in the Junior College. Therefore, some of the Junior Lecturers, who by fortuitous circumstances, happen to work in Degree College cannot claim that they are entitled to get his pay in the U.G.C. scale and at the same time denying the same scale to a senior in the category who happen to work in a Junior College. Therefore, the exercise contemplated in para (d) against item 4 of Annexure-I of G.O. 1072 has to be done and thereafter only the UGC pay scales can be given to such of the Junior Lecturers who were considered fit by the D.P.C. for posting/appointment in the posts of Lecturers in Degree Colleges and fix the pay in the U.G.C. pay scales. Such an exercise is in accordance with the rules and there cannot be any discrimination. If this exercise is not done and all the Junior Lecturers who happen to be in Degree Colleges are given the UGC pay scales, irrespective of seniority in the category of Junior Lecturers, it amounts to discrimination.

For the reasons above we conclude that the petitioners as Junior Lecturers in Degree Colleges, are entitled for declaration or direction to grant them the UGC pay scales (Revised Pay Scale, 1976) as a matter of right, simply because they happen to work in Degree Colleges, without complying with requirements laid down in law and the instructions issued in G.O. 1072, or irrespective of the seniority in the category of Junior Lecturers and without being processed by the D.P.C. The respondents are directed to conduct the exercise contemplated in G.O. 1072 and the subsequent instructions on the subject as expeditiously as possible and in any event within a period of six months from the date of receipt of copy of this Judgment".

27. Written submissions made in this regard before the Tribunal by Sri Surender Rao also had been repeated and reiterated and the same had been produced before this Court. On a careful analysis and scrutiny of the orders made and the directions issued and the observations recorded in the prior judicial proceedings and the G.Os. issued from time to time and also the memos and the correspondence which had been produced by the respective parties before the Tribunal, this Court is called upon to decide the validity of the retrospectivity while finalizing the seniority list.

28. The merger or creation of common cadre of Lecturers by virtue of the merger is not in serious controversy. The fact that the writ petitioners and several other Assistant Lecturers etc., similarly placed specified to be drawing higher salary when compared to Junior Lecturers as shown even in G.O.Ms.No.1072 would be affected by retrospective promotions fixed by the final seniority list by virtue of G.O.Ms.No.73, also cannot be in serious dispute. The legal fiction and applicability thereof or power of Government to fix seniority in this regard may not save the Junior Lecturers/promotees so as to ward off the legal blow and to protect themselves of the retrospective promotions since it would amount to an arbitrary action and offending Article 14 of the Constitution of India and cannot stand the test of legal scrutiny. The stand taken by the State Government is that the Government being the final authority to decide this issue, had taken into consideration all the relevant aspects and had finalized the seniority list. Retrospective promotions are to be given on justifiable and intelligible reasons. A cadre placed on a higher footing of scale as reflected from G.O.Ms.No.1072 cannot be affected of the seniority in any way by this retrospective action. Executive fiat stands on a different footing when compared to a legislative measure. It is also pertinent to note that even if it is a legislative measure, the same should answer the test of Article 14 of the Constitution of India, lest the said action would be struck down. O.A.No.325/99 & Batch and orders made therein referred to supra are self-explanatory which had attained finality. It is pertinent to note that both the contesting parties intend to derive advantage out of this order and the consequences flowing therefrom. The Counsel for unofficial respondents placed strong reliance on **PRAFULLA KUMAR DAS Vs. STATE OF ORISSA** wherein a Five Judge Bench while dealing with the concept of year of

allotment as workable in relation to Orissa Administrative Service Class II (Appointment of Officers Validation) Act (8 of 1987), Section 3(2a) as inserted by Section 2 of Orissa Administrative Service Class II (Appointment of Officers Validation) Amendment Act of 1992 and Rule 4 of 1959 Rules, Integrated Service and merger resolution, observed at paras 28 and 29 as hereunder :

> "We have outlined above our reasons for upholding the validity of the principle of year of allotment, principal among which is our disinclination to tamper with a settled practice, in view of the dicta contained in the decision of this Court in the Direct Recruit Engineering Officers' Association case (supra). The concept of year of allotment has also been shown to be a workable one, inasmuch as it was still open to the Government in the post 1973 merger scenario to recruit officers from a variety of sources, including, but not limited to, transfer from comparable services. When once the concept of year of allotment is deemed to be upheld, it matters not that the first name of O.S.A.S. would rank immediately below the last name of the erstwhile O.A.S. The material point of fact is that through the adoption of a legal fiction and by having recourse to his Constitutional function under Article 309 of Constitution, the Governor of the State of Orissa appointed certain officers in the year 1975, who were appointed against vacancies which were identified in the year 1973, prior to the entry into force of the Merger Resolution of December, 1973. That being the case, the legal fiction of year of allotment would operate in respect of the 1975 appointees as if they had been appointed in the year when the vacancies were initially identified; in other words, they would be deemed to have been appointed in the year 1973, prior to the merger of the O.A.S.II with the O.S.A.S., although their actual period of service was seen to commence only in 1975.
>
> We are also constrained to point to the fact that by virtue of the merger resolution the principle of promotion contained in the 1959 Rules was upheld such that the promotees of a particular year would be accorded seniority above the direct recruits of that year. It is those members of the O.S.A.S. such as the present petitioners, who were unable to secure promotion when their cases came up before the O.S.A.S. in the years preceding the Merger Resolution (1970-73), who seek seniority over the direct recruits by mere fact of their being members of the integrated service. In our considered opinion, such wholesale integration may not be regarded as the promotion of the whole of the O.S.A.S. This inference is supported by the various provisions contained in the Recruitment Rules of 1959, principally R.10(7) and R.11."

The validity of Section 2 of the Amendment Act of 1992 was the question in controversy in the said decision. The decisions in **DIRECT RECRUIT CLASS II ENGINEERING OFFICER'S ASSOCIATION Vs. STATE OF MAHARASHTRA** and **NITYANANDA KAR Vs. STATE OF ORISSA** and other decisions relevant to the point also had been discussed in the decision referred to supra. The wisdom of the Government in deciding to merge the categories into one category of Lecturers is not in serious controversy but the question which is seriously controverted is the retrospective promotions from 1-4-1976. A three Judge bench of the Apex Court in the decision referred (4) supra dealing with Article 16 of the Constitution of India, seniority and giving ante-date promotions retrospectively, held at para-2 as hereunder :

> "The learned Counsel for the appellants invited our attention to the decision of this Court in State of Bihar Vs. Akhouri Sachindra Nath, JT (1991) 2 SC 279 : [1992(3) SLR 94 (SC)]. The question in that case was more or less similar to the question arising in the present appeal. In that case also the question was regarding the fixation of inter se seniority between direct recruits and promotees. In that case also the promotees were granted seniority from retrospective date. That was the bone of contention between the parties. This Court held interest backdrop of those facts that no person could be promoted with retrospective effect from a date when he was not borne on the cadre so as to adversely affect others. It held that promotees not borne on the cadre at the time when direct recruits came to be appointed cannot be given seniority in service over direct recruits. The ratio of that decision applies squarely in the present appeal also. In view of the same, the learned Counsel for the State also found it difficult to support the Judgment of the High Court."

Submissions at length were made by the Counsel representing the writ petitioners and reliance also was placed on the decisions referred (1), (2) and (3) supra.

29. Apart from this aspect of the matter, it is clear that for Junior Lecturers to be absorbed into the category of Lecturers, certain conditions are to be satisfied and the same is not automatic. Findings and the observations

referred to supra both in R.P.No.1705/87 & Batch and also O.A.No.325/99 & Batch are clear and categorical and in fact the relevant G.Os. holding the field from time to time and the developments subsequent thereto also had been well traced and in view of the fact that the said findings and the observations already had been referred to supra, the same need not be repeated again. On a careful scrutiny of all the facts of the case and the findings recorded by a Five Judge Bench of the Apex Court in the decision referred (7) supra, the same is distinguishable on facts. Though the decisions referred (1) to (4) supra also are distinguishable on facts, the principles relating to the giving of the ante-dated promotions with retrospectivity had been well settled by the consistent pronouncements made by the Apex Court in this regard. Lengthy submissions made that in relation to the conferment of certain monetary benefits and Career Advancement Scheme etc., inasmuch as this principle had been accepted the same may have to be extended while finalizing the seniority list also with retrospectivity, cannot be accepted and the same have to be rejected for the reason that from the very reading of G.O.Ms.No.1072, to approve such promotions with retrospectivity would be affecting the promotional avenues of the writ petitioners and similarly placed persons who have been in fact drawing higher salary as reflected from the G.O. It is pertinent to note that fixing seniority is something different from having qualification and eligibility to be appointed as Principal. That stands on a different footing altogether and hence this Court is not inclined to express any opinion relating to the said aspect.

30. A futile attempt had been made by the learned Counsel representing the unofficial respondents to attack the very regulairity of the appointments of the Assistant Lecturers as Lecturers for want of particulars and want of ratification by the Government and also on the ground that all the affected parties are not impleaded as parties and on that ground also the writ petitioners are bound to fail. This Court is not inclined to accept with the said contentions for the reason that it is a case of the principle to be laid down in relation to fixing of seniority and G.O.Ms.No.73 is attacked on the ground that such fixation with retrospective effect is arbitrary and adequate representation is made in relation to that section to defend the case and to ventilate the grievances of Junior Lecturers/promotees. Hence in view of the fact that there is due representation it cannot be said that the writ petitioners are to be non-suited on the ground that all the affected parties had not been impleaded. Apart from this aspect of the matter, this Court is concerned with only the legality of the retrospective promotion given to the Junior Lecturers/promotees virtually affecting the Assistant Lecturers and others who had been better placed even on parity of scales as reflected from G.O.Ms.No.1072. Reliance was placed on the decision of the Division Bench in the decision referred (5) supra wherein it was held that to claim seniority the appointment should be made according to the statutory rules and the appointees get seniority from the date on which they were regularly appointed. In the light of the long journey of service which the writ petitioners had put in, at this length of time, this is a futile exercise which is being made by the unofficial respondents to defeat the claim of the writ petitioners and the similarly placed persons who had questioned the final seniority list on the ground of the same being an arbitrary action in giving the retrospective promotions. When G.O.Ms.No.73 and the action of the State Government in issuing thereof, the final seniority list, being not in conformity with Article 14 of the Constitution of India, this Court is satisfied that the Tribunal had not arrived at the correct conclusion especially in the light of the findings and the observations made in the prior O.A.No.325/99 & Batch.

31. In the light of the settled principles in reckoning the seniority laid down by the Apex Court in service jurisprudence, this Court is satisfied that G.O.Ms.No.73 and the fixation of seniority was not done in accordance with law and hence the final seniority list issued cannot stand to legal scrutiny. In the peculiar facts and circumstances, it is hereby directed that the State Government shall refix the seniority of the writ petitioners and similarly placed persons and also the unofficial respondents and similarly placed persons in the light of the views expressed supra by duly reconsidering the final seniority list already prepared within a period of three months from the date of receipt of the order. In the peculiar facts and circumstances, this direction would be a just and reasonable direction and also one to be granted on the ground of equity too.

The Writ Petitions are accordingly allowed to the extent indicated above. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : -2-2005

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Friday, Eighteenth day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

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One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

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